reconciling our priorities

ANNUAL REPORT 2006-2007

environmental commissioner of ontario

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"Either [we] address the problem soon in a way we select,
or at some point the problem will likely address us
in an unpleasant way of its own."

— Warren Buffett

Environmental
Commissioner
of Ontario

Commissaire à
l'environnement
de l'Ontario

Gord Miller, B.Sc., M.Sc.
Commissioner

Gord Miller, B.Sc., M.Sc.
Commissaire

November 2007

The Honourable Michael A. Brown
Speaker of the Legislative Assembly of Ontario
Room 180, Legislative Building
Legislative Assembly
Province of Ontario
Queen's Park

Dear Speaker:

In accordance with Section 58 of the Environmental Bill of Rights, 1993, I am pleased to present the 2006/2007 annual report of the Environmental Commissioner of Ontario for your submission to the Legislative Assembly of Ontario.

Sincerely,

Gord Miller
Environmental Commissioner of Ontario

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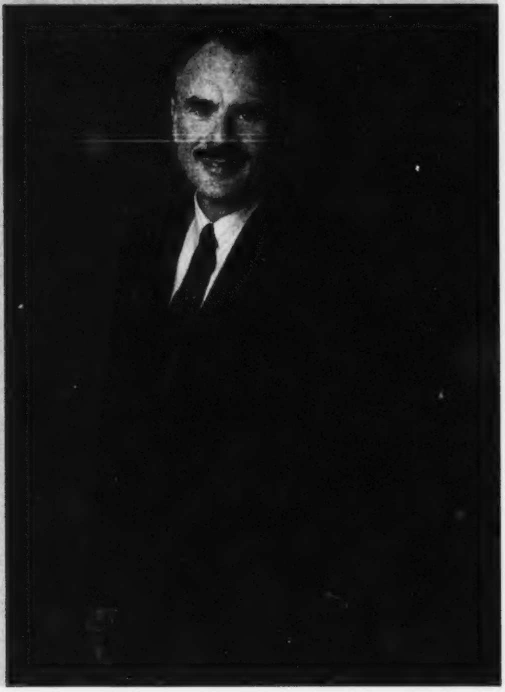


A Message from the
Environmental Commissioner
of Ontario

reconciling our priorities

(is no piece of cake)

The expression is to "have one's cake and eat it too." It means to desire two incompatible or mutually exclusive things. The curious logic of this proverb is a corruption of the more sensible sixteenth century expression "wolde you bothe eate your cake, and have your cake?" The answer to this conundrum in the context of planning Ontario's landscape is 'we wolde.'

Cake is a very nice thing. I don't know anybody who doesn't like cake. But once it's eaten, all that's left are a few crumbs on a plate, an uncomfortably full feeling and, perhaps, an illogical longing for even more cake.

The 'cake' on the Southern Ontario landscape is the relatively flat land with deep soils underlain by sturdy bedrock that allows us to cheaply dispose of our solid wastes and build great cities and suburbs supported by elaborate infrastructures of roads and pipes and wires. It is the close at hand glacial deposits of sand and gravel, as well as the dolostone bedrock of the Niagara Escarpment, that provides the raw materials used to create many of our buildings and structures. The cake is clean, fresh water that can be drawn from the earth or the streams or those huge reservoirs left as a legacy of the Wisconsin Glaciation we call the Great Lakes. And, it is the use of such aquifers, streams and lakes to assimilate and cleanse the effluents of our society's wasteful activities and excesses.

But, the cake is also other things we desire and feel we deserve. It is the prime agricultural land – so limited in Ontario – that produces our food, supports a farm economy and provides a way of life for so many families. It is the mosaic of forests, wetlands and wild spaces intertwined with that farmland that sustains a rich native flora and fauna, as well as providing an essential staging zone for tens of millions of birds migrating between the tropics and Ontario's boreal or the arctic beyond.

The cake includes the water systems that, beyond their utilitarian value, we want to support healthy aquatic ecosystems. We want the fish in the Great Lakes to be fishable and edible. We want our children to play along streams populated by waterfowl, turtles, frogs and creatures of all types that enrich their experiences and their development. And we want those spring fed cold headwater streams where brook trout lurk under old logs waiting to be coaxed out by just the right fly.

The cake is also the vistas – the beauty of the almost uninterrupted forested escarpment stretching from Niagara Falls to the island of Manitou.

In Northern Ontario the "cake" may be different, but the incompatible desires are the same. We want the wealth extracted from the forests in the form of lumber, construction sheeting and paper. We want the jobs associated with mining minerals from the earth. And we want to extract the energy potential available as millions of cubic metres of water cascade off the Canadian Shield into the Hudson Bay Lowlands.

But at the same time we want to preserve the integrity of the boreal forest, perhaps the last and greatest closed canopy forest left on the planet. We want to ensure that sufficient roadless forested areas remain to provide future generations with the unique spiritual experience of true wilderness that is so fundamental to our Canadian heritage. We want our First Nations in the remote north to have a better life and have full access to the opportunities of our economic system, while at the same time preserving the fundamentals of their heritage and their lifestyle.

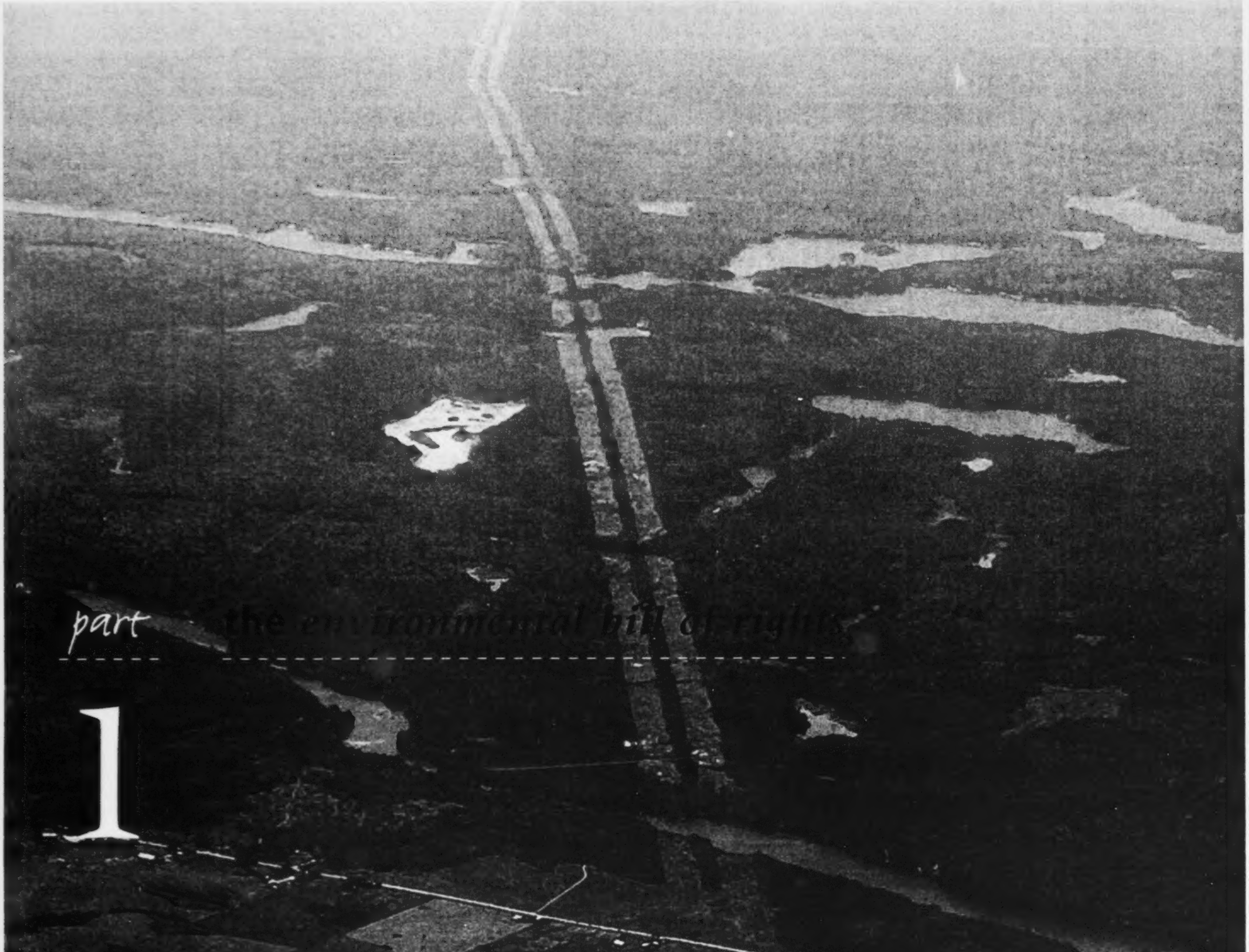
Our legislation, regulations and provincial policy statement all assert our devotion to these goals. Yet, in practice, many of our stated priorities are partially or totally incompatible. When conflict forces a resolution, it is usually the environmental priorities that are sacrificed in favour of a short-term economic advantage. We keep saying that we want our cake, but we can't stop eating it.

Our provincial policy statement for planning says that development is forbidden in our provincially significant wetlands. But roads, sewers, pipelines and other infrastructure are not considered development and so they are pushed into these lands. If agricultural interests want to drain wetlands, they get a government subsidy. But until this fall, if a conservation group wanted to restore a wetland, they had to pay the government a hefty fee. We commit to sustainable forestry and protection of threatened species. Yet we continue to expand forestry into the last habitat of the woodland caribou, even though we know that current forestry practices have always led to the elimination of local caribou populations. The list of incompatible priorities goes on and on.

It is intellectually dishonest to allow these incompatible priorities to exist in our policy systems and for us to pretend we can eat our cake and have it too. Sooner or later we have to face up to the inherent contradictions of our planning policies. We have to have an open public discussion on these important issues. We have to reconcile our priorities, or soon enough there will be no more cake to save.

GORD MILLER
Environmental Commissioner of Ontario

part 1 the environmental bill of rights



The *Environmental Bill of Rights (EBR)* gives the people of Ontario the right to participate in decisions that affect the environment made by ministries prescribed under the Act. The *EBR* helps to make ministries accountable for their environmental decisions, and ensures that these decisions are made in accordance with the goal all Ontarians hold in common – to protect, conserve, and restore the natural environment for present and future generations. The provincial government has the primary responsibility for achieving this goal, but the *EBR* provides the people of Ontario with the means to ensure it is achieved in a timely, effective, open and fair manner.

The *EBR* gives Ontarians the right to…

- comment on environmentally significant ministry proposals;
- ask a ministry to review a policy, Act, regulation or instrument;
- ask a ministry to investigate alleged harm to the environment;
- appeal certain ministry decisions; and
- take court action to prevent environmental harm.

Statements of Environmental Values

Each of the ministries subject to the *EBR* has prepared a Statement of Environmental Values (SEV). The SEV guides the minister and ministry staff when they make decisions that might affect the environment.

Each SEV should explain how the ministry will consider the environment when it makes an environmentally significant decision, and how environmental values will be integrated with social, economic and scientific considerations. Each minister makes commitments in the ministry's SEV that are specific to the work of that particular ministry.

The Environmental Commissioner and the ECO Annual Report

The Environmental Commissioner of Ontario (ECO) is an independent officer of the Legislative Assembly and is appointed for a five-year term. The Commissioner reports annually to the Legislative Assembly – not to the governing party or to provincial ministries.

In the annual report to the Ontario Legislature, the Environmental Commissioner reviews and reports on the government's compliance with the *EBR*. The ECO and staff carefully review how ministers exercised discretion and carried out their responsibilities during the year in relation to the *EBR*, and whether ministry staff complied with the procedural and technical requirements of the law. The actions and decisions of provincial ministers are monitored to see whether they are consistent with the ministries' Statements of Environmental Values (see page 176).

The ECO's Annual Report for 2006/2007 is divided into nine parts:

Part 1, Introduction – the ECO describes the basic requirements of the *EBR* and the contents of the Annual Report and the Supplement to the report.

Part 2, Significant Issues – the ECO highlights a number of important issues that have been the subject of recent applications under the *EBR* or are related to recent decisions posted on the Environmental Registry.

Part 3, Ministry Environmental Decisions – the ECO assesses how ministries used public input to draft new environmental Acts, regulations and policies.

Part 4, Applications for Review and Investigation – the ECO reviews how ministries investigate alleged violations of Ontario's environmental laws, and whether applications from the public requesting ministry action on environmental matters were handled appropriately.

Part 5, the Environmental Registry – the ECO reviews the use of the Environmental Registry by prescribed ministries, evaluates the quality of the information ministries post on the Registry, and assesses whether the public's participation rights under the *EBR* have been respected.

Part 6, Ministry Progress – the ECO follows up on the progress made by prescribed ministries in implementing recommendations made in previous annual reports.

Part 7, Appeals, Lawsuits and Whistleblowers – the ECO reviews appeals and court actions under the *EBR*, as well as the use of *EBR* procedures to protect employees who experience reprisals for "whistleblowing."

Part 8, Developing Issues – the ECO reviews a developing issue related to flood management in Ontario.

Part 9, Financial Statement – in compliance with the reporting requirements of the Office of the Assembly under the *Legislative Assembly Act* for the year ending March 31, 2007, as audited by the Office of the Auditor General of Ontario.

In addition, a series of appendices present a summary of the 2006/2007 ECO recommendations (cross referenced to the relevant sections in this report), a synopsis of ministry comments on this report, an index and the ECO staff list for 2006/2007. A glossary of key terms is available on the ECO website at www.eco.on.ca Finally, a Supplement to the report provides further detail on the *EBR* activity during the reporting period.

The Environmental Registry

The Environmental Registry is the primary mechanism for the public participation provisions of the *Environmental Bill of Rights*. The Registry is an Internet site where ministries are required to post notices of environmentally significant proposals. The public has the right to comment on the proposals before decisions are made, and ministries must consider these comments when they make their final decisions and explain how the comments affected their decisions. For complete information on the Environmental Registry and the ECO's evaluation of its use by the prescribed ministries, see Part 5, page 150.

The Registry can be accessed at: www.ebr.gov.on.ca

Ministries Prescribed Under the *EBR**

Agriculture, Food and Rural Affairs (OMAFRA)
Culture (MCL)
Economic Development and Trade (MEDT)
Energy (ENG)
Environment (MOE)
Government Services (MGS)

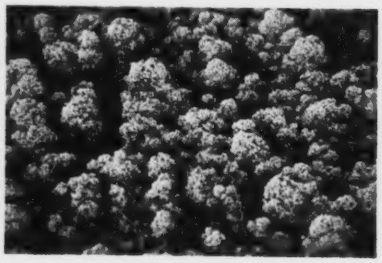
Health and Long-Term Care (MOHLTC)
Labour (MOL)
Municipal Affairs and Housing (MMAH)
Natural Resources (MNR)
Northern Development and Mines (MNDM)
Tourism (TOUR)
Transportation (MTO)

* Two ministries under the *EBR* were reconfigured during 2005/2006. The Ministry of Consumer and Business Services was merged with Management Board Secretariat to recreate the Ministry of Government Services. In addition, a new ministry, Health Promotion (MHP), was created; in late June 2006, the ECO made a formal request that MHP be prescribed under the *EBR*. The ECO's 2006/2007 annual report and Supplement use the new ministry names even though O. Reg. 73/94 (which lists those ministries and Acts prescribed under the *EBR*) was not updated until June 2007. As of June 2007, the Ministry of Public Infrastructure Renewal (MPIR) and the Ministry of Health Promotion remain among the unprescribed ministries.

The ECO Recognition Award

Each year, the Environmental Commissioner of Ontario invites ministries to submit programs and projects for special recognition. The ECO's Recognition Award is intended to acknowledge those ministries that best meet the goals of the *Environmental Bill of Rights* or that use the best internal *EBR* practices. This past year, five ministries responded to our call for nominations, submitting a total of 15 projects for consideration.

An arm's-length panel reviewed the list of submissions. Based on the panel's recommendation, the ECO has chosen not to give a Recognition Award for the 2006/2007 reporting year. The panel and the ECO believe that it would be premature to recognize some of the nominated projects and programs before their full implementation. Other initiatives described in the submissions were primarily statutory responsibilities, or not of the calibre of previous award recipients.



Education

The ECO's educational mandate, as set forth under the *Environmental Bill of Rights (EBR)*, is to ensure that Ontarians are able to participate in a meaningful way in the province's environmental decision-making process. There are three main components to the ECO's education program.

The ECO Information Officer, who in 2006/2007 handled over 1,600 direct inquiries to the office, is the first of these components. The Officer has access to the full resources of the ECO in order to respond to public inquiries in an efficient, timely and courteous manner, and to ensure that members of the public understand how to exercise their environmental rights under the *EBR*.

The second component is a multi-faceted outreach strategy, in which staff participate in a wide range of environmental events in a concerted effort to reach all sectors of Ontario's population. This year, the Environmental Commissioner made more than 50 keynote presentations and speeches at a variety of functions, while his staff attended or made presentations at a similar number of events.

The third component of the education program is the ECO web site which, over the past year, received more than 120,000 visits. This year, the ECO is launching a new and improved web site to better showcase the research and information we produce. The ECO conducts in-depth research on a wide variety of issues affecting the environment in Ontario communities; this puts us in a unique position to access and provide up-to-date information on Ontario government activities. Our new web site will make this material available in an easily accessible format.

The web site also provides a link to the Environmental Commissioner's new on-line blog. The blog, which includes video clips, will allow the public to keep in touch with the Commissioner between the releases of new research reports and other major announcements. It will also provide a behind-the-scenes look at Ontario's evolving environmental policies. Available material includes a piece on the Great Lakes and video blogs to support his last Special Report, "Doing Less with Less", released in April of this year. To learn more, please visit our web site at www.eco.on.ca.

Part 2

significant issues

Each year, the ECO highlights a number of environmental issues that are related to recent ECO research projects, applications under the *EBR*, or decisions posted on the Environmental Registry.

This year, the ECO has prepared two major analyses related to the promotion of sound land use planning and the protection of ecological values in Ontario. The first analysis examines 'irreconcilable priorities' – the various economic, political and social forces that reinforce unsustainable approaches to planning and development in Southern Ontario. It is argued that planning efforts must be significantly refocused in the next decade if we are to begin creating truly sustainable urban and rural communities in Southern Ontario.

The second analysis examines the environmental implications of various land use policies and allocation decisions in Ontario's northern boreal landscape. The ECO believes it is time to take a step back and evaluate whether recent government initiatives and policies can reconcile the conflicting goals of ecosystem protection for the boreal forests and economic development for the region.

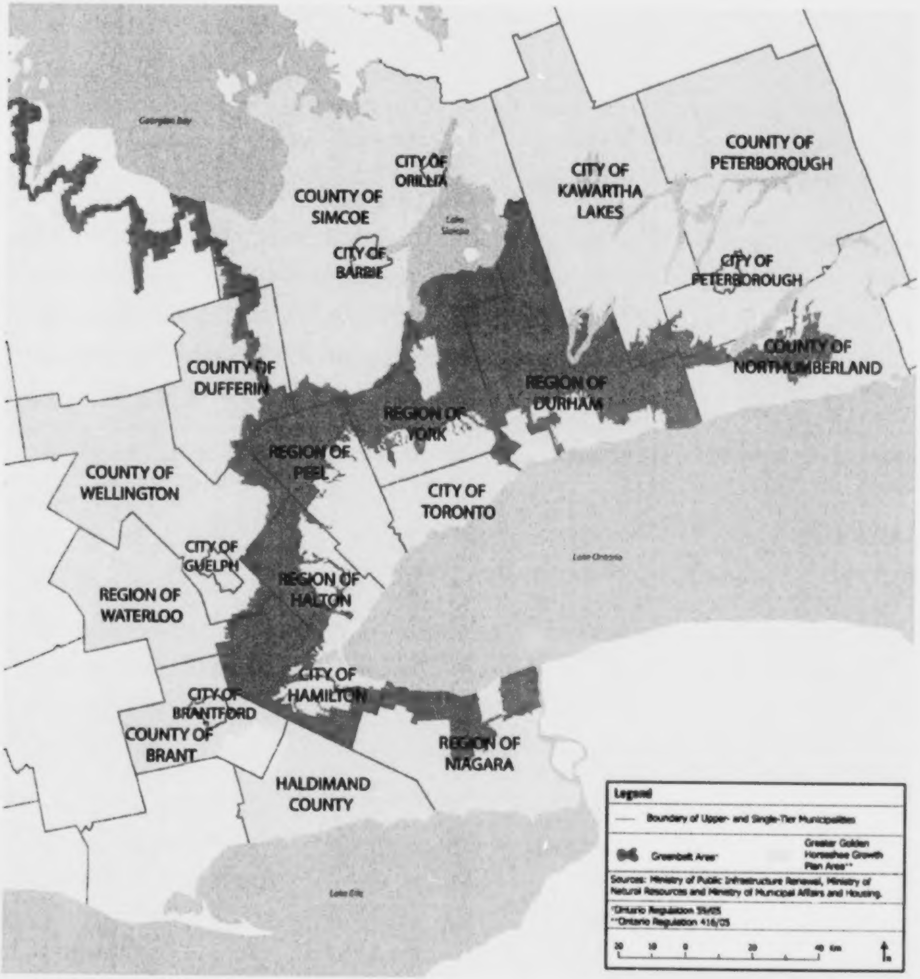
Two case studies related to these themes follow. First, we discuss how the woodland caribou has become a sentinel species and indicator of the ecological impact of development in Northern Ontario. The ECO notes the policy choices now under consideration by the Ontario government could determine whether the species survives or, instead, disappears from Ontario's boreal forests forever.

The second case study examines the massive 20-year plan to overhaul Ontario's electricity generating system announced by the Ministry of Energy in June 2006. The Integrated Power System Plan is undoubtedly one of the most significant electricity system initiatives in Ontario's history, and its environmental implications will be sweeping and long-lasting.

The section also contains a number of updates on a range of topics, including the on-going reform of the environmental assessment process, changes to the system for recycling LCBO containers, and the passage of new legislation on endangered species.

Irreconcilable Priorities: The Challenge of Creating Sustainable Communities in Southern Ontario

| Planning Zones in South Central Ontario |



Growth Plan Greater Golden Horseshoe map, 2006.

Introduction

Accommodating unprecedented growth

Southern Ontario is one of the fastest growing regions in North America. The area is already home to 94 per cent of the province's population (or 36 per cent of Canada's population of 32.8 million people) and the government projects that, by 2031, an additional four million people will settle in the Greater Golden Horseshoe (the GGH is an area in Southern Ontario, extending roughly from Niagara Falls to Georgian Bay to Peterborough). This rate of growth is unprecedented in Ontario; the anticipated increase is equivalent to creating a mid-sized city roughly the size of Kitchener every year for the next 24 years.

To cope with the projected population and economic growth in Southern Ontario over the next few decades, the Ontario government established the Ministry of Public Infrastructure Renewal (MPIR) in late 2003 and enacted the *Places to Grow Act (PGA)* in 2005 so that planning could "occur in a rational and strategic way." Under the *PGA*, MPIR was required to prepare a Growth Plan (GGH Plan) in 2006 for the GGH. The GGH Plan is a framework that establishes specific density targets and planning priorities for managing growth in the region.

In addition, the province has invested significant energy in the development of related legislation, plans, policies and guidelines aimed at striking a balance between the rapid growth of human communities and the need to protect important resources and features, such as Southern Ontario's natural areas, source water and agricultural lands. Complementary to the *PGA* and the GGH Plan are the *Greenbelt Act* and Plan, also established in 2005. The interrelated Acts and plans are intended to promote more compact, sustainable urban communities, in order to curb sprawl-style development and reinforce efforts within the Greenbelt Plan area to preserve agricultural lands and natural heritage areas, and moderate growth in rural communities. Associated planning reform initiatives are also designed to provide the tools needed to promote more sustainable community development and protect natural features and functions: these initiatives include the new Provincial Policy Statement introduced in 2005 (2005 PPS), the 2006 Building Code, the *Clean Water Act*, and the amendments to the *Planning Act* contained in Bill 51. Some of these initiatives are summarized in Table 1.

Table 1 | A Summary of Selected Recent Provincial Planning Initiatives

Initiative	Summary / Purpose
Strong Communities (Planning Amendment) Act (2004)	The *SCA* changes the *Planning Act* in several key ways by: • requiring that decisions made by planning authorities "shall be consistent with" provincial policy statements; • giving the Minister of Municipal Affairs and Housing power to declare a provincial interest at an Ontario Municipal Board hearing; and • preventing the appeal of settlement boundary changes not supported by municipalities. See ECO's 2004/2005 Annual Report for a review of the Act.
Provincial Policy Statement (2005)	Key elements of the 2005 Provincial Policy Statement include: • encouragement of brownfields redevelopment; • new emphasis on intensification and minimum densities; and • provisions supporting energy efficiency and air quality initiatives. See ECO's 2004/2005 Annual Report for a review of the 2005 PPS.
Greenbelt Act (2005) and Greenbelt Plan (2005)	The *Greenbelt Act* sets out numerous objectives for the Greenbelt Plan, including: • establishing a network of countryside and open space areas that supports the Oak Ridges Moraine and Niagara Escarpment; • sustaining the countryside, rural and small towns, and contributing to economic viability of farming communities; • preserving agricultural land as a continuing commercial source of food and employment; • providing protection to the land base needed to maintain, restore and improve ecological and hydrological functions; and • providing open space and recreational, tourism and cultural heritage opportunities. See ECO's 2004/2005 Annual Report for a review of the *GB Act* and Plan.
Places to Grow Act (2005) and Greater Golden Horseshoe Growth Plan (2006)	The *PGA* sets out numerous objectives for provincial growth plans, including: • enabling decisions about growth to be made in ways that sustain a robust economy, build strong communities and promote a healthy environment and culture of conservation;

Table 1 | A Summary of Selected Recent Provincial Planning Initiatives (continued)

	• promoting a rational and balanced approach to decisions about growth that builds on community priorities, strengths and opportunities and makes efficient use of infrastructure; • enabling planning for growth in a manner that reflects a broad geographical perspective and is integrated across natural and municipal boundaries; and • ensuring that a long-term vision and long-term goals guide decision-making about growth and provide for the co-ordination of growth policies among all levels of government.
Bill 51 (2006), the Planning and Conservation Land Statute Law Amendment Act, and associated regulations	Key *Planning Act* changes made in Bill 51 include: • addition of transit- and pedestrian-friendly design as a provincial interest; • a requirement that municipal and provincial planning decisions and documents "shall be consistent with and conform with" the provincial policy statements and provincial plans, respectively; and • enhanced requirements for public notice, information, and consultation. See this ECO Annual Report for a review of Bill 51 on pages 107–112.

The threat of 'irreconcilable priorities'

While the province's efforts to date are laudable, the ECO believes it is now timely to take a step back and evaluate whether these efforts will achieve the intended goals of ecosystem protection and the creation of truly sustainable urban communities in Southern Ontario. The risks to environment and quality of life over the long-term will be great if these planning efforts should fail.

The ECO's own preliminary evaluations suggest that serious conflicts – described here as '*irreconcilable priorities*' – are inherent in the province's plans for balancing growth and ecosystem sustainability. Some priorities that reinforce unsustainable approaches to community development in Southern Ontario remain ingrained and unchallenged in recent provincial initiatives, trumping priorities and options that would more effectively promote ecosystem and community sustainability.

> "Human activity is putting such strain on the natural functions of Earth that the ability of the planet's ecosystems to sustain future generations can no longer be taken for granted."
>
> – Millennium Ecosystem Assessment Board, 2006.

This section of our report explores in greater depth several areas where irreconcilable priorities already are creating conflicts, or are likely to generate future clashes, between the growth of human communities and the goal of ecosystem sustainability. Our analysis shows that sustainability must become the key overriding principle in guiding efforts to accommodate the human population increases projected for Southern Ontario.

Four topics involving irreconcilable priorities are explored:

1. Living sustainably within a watershed, OR Pushing beyond natural limits?
2. Creating a sustainable transportation system, OR Paving over the landscape?
3. Protecting wetlands, OR Draining for development?
4. Preserving natural areas, OR Extracting aggregates wherever they lie?

In addition, two profiles describe the efforts undertaken elsewhere to embrace truly sustainable approaches to community development and functioning. Short case studies of Dockside Green in Victoria, British Columbia, and Amory Lovins' "nega-litres" soft path concept for water conservation are put forward as food for thought in blue sidebars.

Sustainability principles and ecological footprints

> In the late 1980s, the Brundtland Commission, also known as the World Commission on Environment and Development (WCED) defined sustainable development as that which "... meets the needs of the present without compromising the ability of future generations to meet their own needs." The Commission elaborated on its definition by explaining that "sustainable global development requires that those who are more affluent adopt life-styles within the planet's ecological means – in their use of energy, for instance". Further, "...sustainable development can only be pursued if population size and growth are in harmony with the changing productive potential of the ecosystem."
>
> – Brundtland Commission, 1987.

In the past two decades, other groups have sought to translate the Brundtland Commission's definitions into practical rules to guide development. For example, in 1989 the Ontario Round Table on Environment and Economy (ORTEE) devised a useful set of sustainable development principles (see box below). Particularly pertinent to our analysis is ORTEE's Principle Four: "We must live off the interest our environment provides and not destroy its capital base." This principle emphasizes the fact that there are limits to growth, imposed by the reality of ecosystem-specific resource constraints. Further, these limits must be taken into account in order to achieve and maintain a sustainable state as the human community evolves and grows.

Six Principles of Sustainable Development

In 1989, the Ontario Round Table on Environment and Economy (ORTEE) devised six principles intended to promote sustainability. These principles remain as relevant today as in 1989.

1. Anticipating and preventing problems are better than trying to react and fix them after they occur.
2. Accounting must reflect all long-term environmental and economic costs, not just those of the current market.
3. The best decisions are those based on sound, accurate, and up-to-date information.
4. We must live off the interest our environment provides and not destroy its capital base.
5. The quality of social and economic development must take precedence over quantity.
6. We must respect nature and the rights of future generations.

– ORTEE, Challenge Paper, 1989.

Measuring ecological footprints

Another important concept or tool for evaluating the sustainability of individual communities is the ecological footprint (EF). Developed by Mathis Wackernagel and William Rees in the mid-1990s, an ecological footprint is defined as "...the land (and water) area that would be required to support a defined human population and material standard indefinitely." Population size and material standard are the two critical variables in the ecological footprint equation; these variables profoundly affect an ecosystem's ability to support a human community in a sustainable manner. Defining an ecological footprint in physical terms has facilitated the development of ecological footprint calculators used to determine the total land area 'consumed' to support a given community living at a given material standard (more information on EF calculators is available at www.footprintnetwork.org).

Calculating footprint size is a powerfully persuasive exercise as it provides a quantitative reference of a human community's impacts on an ecosystem. Consider that the ecological footprints of most Western World communities are so large that, if every human community on the planet lived in a similar manner, multiple planets would be required to supply the necessary resources to support them. In other words, our current approach is already unsustainable – lifestyle changes are critical for the future ecological sustainability of Ontario communities.

The EF also introduces basic principles of ecology into the realm of human community sustainability. This includes the consideration of *carrying capacity* – defined as the "maximum population size of a given species that an area can support without reducing its ability to support the same species in the future." Closely associated with carrying capacity is the concept of *overshoot* – "growth beyond an area's carrying capacity, leading to crash." EFs reinforce the limits to growth and the importance of living within an environment's ecological carrying capacity in order to avoid ecosystem crash. Ecological footprints also emphasize the fact that humans are an integral part of – not separate from – the ecosystems in which they live.

> **"Beyond a certain point, the material growth of the world economy can be purchased only at the expense of depleting natural capital and undermining the life-support services upon which we all depend."**
>
> – Wackernagel and Rees, 1995

Key considerations in planning for sustainability

Making sustainability the priority goal of planning efforts forces consideration of both *where* it is feasible for development and expansion to occur and *how much* additional growth a given community's ecosystem is able to support. This approach also encourages consideration of the current size of a community's ecological footprint and how material standards might need to be adjusted to accommodate current and additional community members in a truly sustainable manner.

Failure to consider basic questions of 'Where to grow?' and 'How much to grow?' is the fundamental problem with many provincial planning initiatives in Southern Ontario. Provincial planning efforts do not employ an ecosystem sustainability perspective to evaluate which communities have the carrying capacity available to accommodate population increases. The current approach ignores the fact that human communities are an integral part of the ecosystem that surrounds them, and that these ecosystems have carrying capacities – or limits to growth – that should determine the human population size that can be supported in a sustainable manner.

In some ways, it should be no surprise that the communities of Southern Ontario find themselves in an environmentally precarious situation. Human ingenuity has led to the creation of a host of technologies designed to *artificially expand* the apparent carrying capacity. Large-scale infrastructure and associated technologies have allowed communities, at least temporarily, to overcome the natural limits to growth that characterize any given ecosystem. But in stretching an ecosystem's capacity beyond its natural limits, these communities are living on borrowed carrying capacity and are more vulnerable to ecosystem crash as a result. It is no coincidence that current planning and development functions – the problem priorities in the irreconcilable priorities dynamic described below – are inevitably directed toward further expanding the demands on the ecological systems of the GGH and other areas of Southern Ontario. It is the on-going, unchallenged pursuit of these problem priorities that will continue to undermine the goal of sustainable community development in Southern Ontario.

Dockside Green – Victoria, British Columbia

Dockside Green is an innovative, mixed use development underway on the harbourfront in Victoria, British Columbia. This development project will transform a six hectare brownfield site into a complex, including residential, retail, office and light industrial uses, housing a total of 2,500 people. The density of Dockside Green – 417 residents and jobs per hectare – is comparable to the 400/ha target for the densest urban growth centres in the GGH Plan developed by the Ministry of Public Infrastructure and Renewal (MPIR).

The development is intended to be the first LEED (Leadership in Energy and Environmental Design) platinum-certified, master-planned community in the world, as well as the first greenhouse-gas neutral development. LEED is a rating system that awards points for sustainable site development, water efficiency, energy efficiency, material selection (including reuse and recycling), indoor environmental quality, and innovation in design.

Some of the innovative approaches being used at the site include:
- use of low, or no volatile organic chemical paints, sealants, adhesives, etc.;
- buildings designed to use 45 to 55 per cent less energy than the Model National Energy Code of Canada for Buildings;
- energy efficient lighting and appliances throughout;
- solar-powered landscaping lights;
- water, heating, and electricity meters in every unit;
- on-site treatment of all sewage generated in the complex, with treated water to be used for toilets, landscape irrigation, and on-site water features;
- potable water usage 65 per cent less than traditional developments;
- green roofs to treat stormwater;
- an on-site car share program, bike trails, and a mini-transit shuttle bus; and
- a commitment to recycle and/or reuse 90 per cent of construction waste on-site.

Finding ways to diminish the ecological footprint of new developments using the model proposed at Dockside Green will make enormous contributions to the protection of the natural environment. For more information on Dockside Green, visit www.docksidegreen.ca.

Living Sustainably within a Watershed, OR Pushing Beyond Natural Limits?

Sustainable water use cycles

One of the most profound examples of competing priorities has arisen in the areas of managing the growing demand for clean water and dealing with wastewater.

A community's health and wellbeing are directly connected to its ability to access adequate supplies of safe, clean water and to effectively treat any wastewater generated. This, in turn, depends on putting in place the appropriate infrastructure. But infrastructure is only one of the water-related challenges facing communities in Southern Ontario; a community's watershed must also contain adequate quantities of ground and surface water and the capacity to absorb and assimilate wastewater discharges in order to establish and maintain a *sustainable* water use cycle.

Sustainable water use on a community planning level is not a new idea. In 1992, the United Nations Environment Programme (UNEP) Agenda 21 initiative called for, "(R)econciliation of city development planning with the availability of water resources" and "(P)romotion at the national and local level of the elaboration of land-use plans that give due consideration to water resources development." The notion of planning within the limits of a given ecosystem's resources (or at least respecting ecosystem boundaries) is gaining ground – out of necessity – as more communities around the globe struggle with water and wastewater challenges. Inherent in this approach is the acknowledgement that there are ecosystem limits to growth. In part, this is why the governments of Ontario, Quebec and the eight U.S. states that border the Great Lakes felt compelled to sign the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement (GLSWRA) in December 2005. (For a review of the GLSWRA, see the ECO's 2005/2006 Annual Report, page 13.)

Ecologically sustainable water management

Some jurisdictions facing water scarcity are formally embracing ecologically sustainable water management (ESWM). This approach involves "…protecting the ecological integrity of affected ecosystems while meeting intergenerational human needs for water and sustaining the full array of other products and services provided by natural freshwater ecosystems." ESWM requires adopting a holistic approach to water and wastewater services by considering a variety of ecological goals, including:

- natural flows for rivers, streams and creeks;
- protecting source water;
- addressing sources of pollution that threaten the health of aquatic ecosystems; and
- managing groundwater supplies with the understanding that they are inextricably linked to surface waters, wetlands and aquatic ecosystems.

It's all about scale

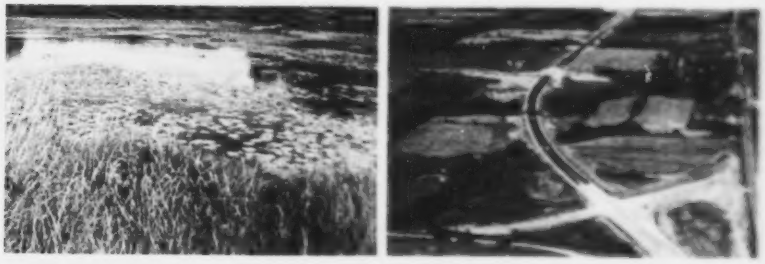
State and provincial governments within the Great Lakes Basin (GLB) ecosystem have embraced at least one key element of ESWM: when they signed the GLSWRA, they imposed restrictions on water diversions outside of the GLB and from one Great Lake watershed to another. While progress is being made in relation to the Great Lakes Basin and the watersheds of the individual Great Lakes, this approach needs to be adapted to the needs of communities and their local watersheds. Ontario's source water protection efforts, through the new *Clean Water Act*, do bring the focus down to the local watershed level, but emphasize only source protection. Thus, currently there is no concerted effort to establish sustainable water use cycles as an integral part of land use planning in Southern Ontario communities, a situation that is problematic given the population growth projections for regions such as the GGH.

Water/wastewater and the GGH plan – Irreconcilable priorities

The GGH Plan proposes urban growth and intensification in watersheds where communities are already struggling with water supply and wastewater treatment issues. These communities will eventually require major upgrades to their water and wastewater infrastructure to accommodate the projected population growth.

The GGH Plan's policy on water and wastewater states clearly that "through sub-area assessment, the Minister of Public Infrastructure Renewal, in consultation with municipalities and other stakeholders, will undertake an analysis of the implications of forecasted growth for water and wastewater servicing." On a positive note, the GGH Plan does include two important requirements:

- before expanding existing water/wastewater systems or building new systems, municipalities should be implementing water conservation and demand management strategies; and
- municipalities in locations where inland water sources and/or receiving water bodies are shared, should co-ordinate their planning for potable water, stormwater, and wastewater systems to ensure the maintenance or improvement of water quality and quantity.

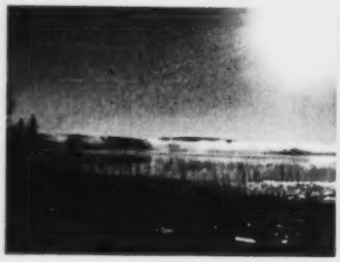


These are important factors to consider in community planning; however the guidance may ring hollow, because the GGH Plan does not require that population allocations be appropriately adjusted in communities where watersheds are close to carrying capacity. Instead, the GGH Plan favours the *artificial extension* of water and wastewater capacity in such communities, through major infrastructure projects designed to pipe water in from outside of the local watershed and, in some cases, to pipe wastewater back out. Long distance transport of water and wastewater also requires costly infrastructure and significant on-going energy supplies to run the pumps that move water and wastewater. In addition, such projects are exempt from the natural heritage protection provisions set out in the 2005 PPS, the Greenbelt Plan (GB Plan) and the Oak Ridges Moraine Conservation Plan (ORMCP), even though their construction will cause significant environmental impact.

Summary and ECO comment

The approach used in the GGH Plan reverses the sustainable planning process; it elevates the province's goal of accommodating population increases – with economic growth as the central driver – over the need to live within ecosystem limits. The emphasis on large infrastructure projects sets up irreconcilable priorities. This approach is not sustainable over the long run, and may only serve to export the capacity challenges to more distant watersheds.

It is unclear whether the GGH Plan will allow for radical reductions in growth allocations if major shortcomings in water and wastewater servicing emerge in communities targeted for growth. The Plan does allow for population allocations to be revisited after five years, but does not indicate what factors were used to determine the existing allocations, or what factors might result in changing those allocations. It appears that accommodating economic growth by population expansion – rather than respecting ecosystem limits – has been the primary driving force in the allocation process. In the interim five-year period, municipalities are obligated to plan to accommodate the existing population projections outlined in the GGH Plan (see Table 2 on page 26). In effect, this obligation will impose large-scale infrastructure projects as the solution to inadequate water and wastewater capacity in designated urban growth areas.



Nega-litres – The Soft Path for Water

In 1976, Amory Lovins proposed a new approach to energy management and called it the "soft path". According to his vision, the soft path was an approach to energy policy that recognized efficiency and renewable energy sources could steadily replace a centralized "hard path" energy system based on fossil and nuclear fuels. Lovins' ideas had a significant impact on debates about energy and environmental policy.

The soft path recognizes that ecosystems are finite and we must find "nega-watts" – rather than building new nuclear plants to generate "megawatts" – by using the resources we extract from the earth more efficiently and conserving. In contrast, the hard path in energy policy has gradually compounded many economic and environmental problems, increased pollution and exacerbated energy insecurity by promoting a centralized distribution system. Nearly always, the hard path is made possible by massive government subsidies, market distortions, and complacency on the part of regulators and the public.

Lovins' ideas also helped open the door to a related concept – *avoided cost*. In 1978, the U.S. federal government enacted the *Public Utility Regulatory Policies Act*, which required energy producers to use of the concept of avoided cost in calculating fair prices for energy, and was intended to promote economic efficiency and environmental protection. In economic terms, avoided cost is the marginal cost for the same amount of a resource – energy or water or some other commodity – acquired through another means, such as construction of a new coal or water treatment plant or purchase from another supplier. For example, the avoided cost of a litre of water – a nega-litre, according to Lovins – is the relative amount it would cost a company or a customer to acquire this water through the development of a new treatment facility or acquisition of a new supplier. As a general rule, experience in the past decade suggests that investing in conservation is much cheaper than building new capacity.

While the concept of avoided cost has never been fully integrated into Ontario public policy, the ORTEE highlighted some of the benefits of conserving resources and avoiding the costs associated with new water treatment plants in its 1992 report "Restructuring for Sustainability." Moreover, many U.S. jurisdictions are looking at using the concept of avoided costs in other realms of resource planning and management.

The Grand River watershed: A tale of two municipalities

While the tension between population growth and water and wastewater management existed in many Southern Ontario communities before the development of the GGH Plan, these tensions are now heightened by the accelerating rate of population growth. The Grand River watershed provides an illustrative example.

Table 2 | Population Projections to the Year 2031

	Municipal Projection	ECO Projections based on Provincial and Municipal Forecasts
City of Guelph	169,300	175,000–195,000[1]
Waterloo Region	590,000	729,000 (GGH Plan)

The GGH Plan establishes five urban growth centres within the Grand River watershed: downtown Guelph, uptown Waterloo, downtown Kitchener, downtown Cambridge and downtown Brantford. As indicated in Table 2, the GGH Plan establishes growth projections for 2031 for Guelph and the Waterloo Region that are significantly higher than those that were developed by the municipalities. All of these communities are dependent on groundwater and/or limited surface water supplies for their drinking water, and all must make use of the same limited surface waters to discharge treated wastewater. The five communities are already dealing with a restrictive environment in which it is extremely challenging to establish sustainable water cycles.

The City of Guelph

With a current population of 115,000, the City of Guelph is wholly dependent on groundwater for its municipal drinking water supply. The municipality currently is developing a Water Supply Master Plan in order to ensure adequate supplies to satisfy population growth projections over the next 50 years. As part of this planning process, an environmental assessment is underway that involves consideration of various alternatives for providing adequate water supplies into the future. These alternatives include:

- treating and optimizing existing groundwater sources;
- installing new groundwater wells within and/or outside of city limits;

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[1] This value for Guelph in 2031 was calculated using the municipality's 2027 projection and its assumption of a modest growth scenario at 1.5% increase per year. See Context Report for the City of Guelph, Local Growth Management Study – September 20, 2006. http://guelph.ca/uploads/Planning/LMGS%20Context%20Report%202006.pdf

- implementing aquifer storage recovery (treating surface water when available and storing it in groundwater aquifers for use as needed);
- accessing local surface water sources;
- pursuing a joint venture to access Lake Erie water via a pipeline; and
- limiting community growth as a method for reducing water supply needs.

The City's Water Supply Master Plan acknowledges that provincial population growth projections for Guelph are greater than the projections in the municipality's Official Plan; the City is planning for a 1.5 per cent annual increase in population to the year 2027, while the province is projecting a 2.5 per cent annual increase over that same period. The province's faster growth scenario would mean that water supply infrastructure capacity will be exceeded approximately 15 years sooner than anticipated under the City's more modest growth scenario. However, the City does acknowledge that reducing per capita water use would allow for more growth to occur within existing capacities. Providing additional capacity, according to the City, comes with "... increasing complexity and costs." It also requires moving beyond the current supply situation, in which the City is able to provide all required municipal water through locally available groundwater supplies.

Moving beyond current capacities also presents another problem – managing increasing volumes of wastewater. The City has acknowledged that its existing wastewater treatment facilities will have to be expanded by the year 2011 to accommodate population growth to a maximum of 154,000 people – a maximum that represents the "... total capacity of the Speed River to assimilate the treated waste." Meanwhile the ability of surrounding aquatic ecosystems to absorb the nutrients and other contaminants in wastewater is already close to capacity, introducing a need for contaminant and nutrient levels in wastewater to be reduced further, or for wastewater to be transported into other watersheds, as population levels increase over time.

The Region of Waterloo

With a population of 478,100 and growing, the Region of Waterloo relies largely on local groundwater sources to supply approximately 75 per cent of its municipal water needs, with the remaining 25 per cent drawn from the Grand River. The Region is currently updating its Water Supply Strategy; its Long Term Water Strategy, finalized in the year 2000, is already out-of-date as a result of the significant increase in regional population projections established through the GGH Plan. In early 2007, regional planners projected a much larger population, possibly exceeding 750,000 by 2041 as an inevitable consequence of GGH Plan implementation. Meanwhile, the provincial government is negotiating with Waterloo Region and Wellington County on how to establish new population forecasts for 2031 and beyond.

Much like Guelph, Waterloo is pursuing a program to improve existing sources of water, including optimizing the yield from its currently operating wells and assessing the potential for additional wells. The Region has already implemented aquifer storage recovery. In addition, it is seriously pursuing the idea of building a pipeline from Lake Erie, proposing that construction could start in 2029 and be completed by 2034.

Wastewater is already an issue in Waterloo, where 13 treatment plants discharge into the Grand River or its watershed. The stretch of the Grand River from Guelph to south of Waterloo Region must handle the overload of nutrients and other pollutants carried by treated wastewater discharges, as well as untreated sewage carried by sewer by-passes. In March 2007, some local municipal politicians expressed concern that the Region is "… growing too fast and we can't manage it." During the next 10 years, the regional municipality expects to spend an estimated $826 million for upgrades and expansions to its water and wastewater treatment services.

Summary and ECO comment

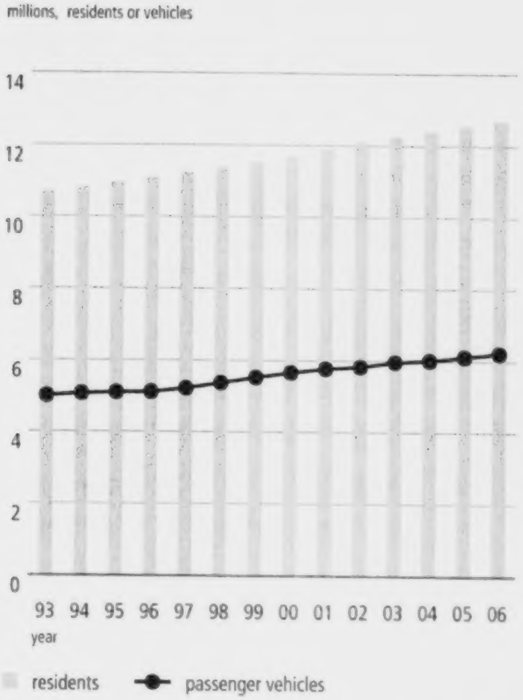
The province has established population projections for some communities subject to the GGH Plan, *before* assessing the related water and wastewater infrastructure needs, their associated costs and environmental impacts. This puts the cart before the horse.

The province's approach fails to allow for the possibility that significant population growth may simply be inappropriate and ultimately unsustainable in some communities, because of ecosystem limitations. To artificially expand the carrying capacity of these communities – through the long-distance transport of water and wastewater – will certainly create systems more vulnerable to disruption and even less self-sufficient. In addition, it will greatly increase the challenges and complexity of protecting ecosystem integrity in the Great Lakes Basin and the GGH.

Creating a Sustainable Transportation System, OR Paving Over the Landscape?

Since the 1950s in North America, day-to-day mobility for residents has increasingly been linked to the use of the passenger vehicle (cars, trucks and vans, or simply the "automobile"). Over that same period, many key parameters for measuring the impacts associated with this form of personal mobility have been increasing: the size of the vehicle population, the average kilometres driven per year, and the gross carbon dioxide emissions produced by the vehicle population. This is true in Ontario, where the number of automobiles owned by Ontarians grows annually (see Figure 1, page 29). There are currently 48,000 automobiles owned and operated in Ontario for every 100,000 residents – roughly one for every two residents.

Figure 1 | The Growth in the Number of Automobiles and Residents in Ontario, 1993–2004



To track patterns in road use and commuting, municipal works departments compile "transportation counts." These records show that the average vehicle occupancy in much of the GGH is typically 1.2 persons – meaning less than one in five drivers are carrying any passengers. Each vehicle commuting on Ontario highways requires a certain amount of road space – under heavy traffic conditions, each one-kilometre lane of road surface can accommodate only 100 automobiles; that's just 120 people per kilometre given the current occupancy rates that are being recorded.

If these trends continue (i.e., the preference for the automobile for mobility, one vehicle for every two persons, and low vehicle occupancy rates), the province will be required to continue to devote thousands of hectares of land in the GGH to new or expanded roads and highways to accommodate the transportation of Ontario's growing population.

Added pressure for road expansion comes from the freight handling sector which, in Ontario, has become heavily dependent on trucks for the movement of goods and raw materials.

When roads are built or expanded in Southern Ontario, either farmland or natural areas are almost always lost. The loss of either carries a significant environmental penalty. The continued availability of local sources of produce, meat and dairy products is key to strategies to reduce greenhouse gas emissions, while natural areas are limited, usually fragments of larger ecosystems, and disappearing fast.

Land use planning and transportation strongly linked

The GGH Plan proposes moving more people by transit, fewer by automobile, and continuing to accommodate a high volume of freight on highways. The *PGA* and the GGH Plan also seek to promote more compact, less sprawling forms of urban growth, and encourage settlements with a mix of housing and employment. Through the GGH Plan and *PGA*, the province intends to reduce the need for travel, lessen traffic congestion, support the use of transit, and encourage walking and cycling. The GGH Plan includes the following vision for the region for the year 2031:

> "Getting around will be easy. An integrated transportation network will allow people choices for easy travel both within and between urban centres throughout the region. Public transit will be fast, convenient and affordable. Automobiles, while still a significant means of transport, will be only one of a variety of effective and well-used choices for transportation. Walking and cycling will be practical elements of our urban transportation systems."

By setting guiding rules for development, the GGH Plan attempts to ensure growth takes place in existing urban centres in the GGH in a way that should preserve the integrity of natural features, such as the Oak Ridges Moraine and Niagara Escarpment. The ECO regards a planned approach to be a very good thing. We also support intensification and building within existing urbanized areas, as opposed to sprawling onto 'greenfield' sites. But the ECO questions some of the GGH Plan's claims and intended outcomes based on our review of its targets, such as those related to density and intensification.

Transportation Objectives in the Growth Plan for the GGH

3.2.3 Moving People. Public transit will be the first priority for transportation infrastructure planning and major transportation investments.

3.2.4 Moving Goods. The first priority of highway investment is to facilitate efficient goods movement by linking inter-modal facilities, international gateways, and communities within the GGH.

Outcome of GGH intensification: Nearly the status quo?

New urban development in the GGH will require the appropriate mix and placement of residences, employment opportunities, schools, shopping and recreational facilities, and other amenities if automobile usage is to be reduced and the use of other modes (like transit, walking and cycling) improved. Studies of the development patterns over the past two decades in urban centres of the Greater Toronto Area (such as Mississauga and Brampton), show a continuing pattern of residential construction on the fringe of urban areas. Meanwhile, employment centres are concentrating in large office or industrial parks near Ontario's 400 series highways, which often have limited transit links and schedules. These patterns have been setting the stage for more automobile use, over the next 20 years, not less. Much of the development that has already been approved for GTA urban centres continues these unsustainable practices and the GGH Plan will not be able to change the pattern of these approved developments.

Some of the municipalities identified in the GGH Plan as urban growth centres like downtown Guelph and Hamilton, Mississauga City Centre and Kitchener are already very close to achieving the density targets they are expected to meet by 2031 under the GGH Plan. However, these centres have not moved substantially away from automobile-based mobility and toward an integrated live-work and transit-based environment. Research by respected transportation planners has concluded that road expansion will continue in the GTA unless and until there is a major shift in lifestyle by the residents of the GGH. The lack of progress to date in shifting away from a car-based culture calls into question the efficacy of the GGH Plan's density targets in promoting the hoped-for mobility changes in the future.

Transit integration – A good first step

To help make the GGH Plan work, the province established the Greater Toronto Transportation Authority (GTTA) through passage of the *GTTA Act, 2006*. GTTA's mandate is to ensure that all levels of government work together to develop a comprehensive long-term transportation plan. More specifically, the GTTA will integrate planning for local transit, GO Transit, major roads, and new transit infrastructure for the Greater Toronto Area and Hamilton. The GTTA is also to address issues, such as congestion, commute times and air emissions generated by the area's transportation system. As of early 2007, there is little to report about the GTTA's progress toward meeting its principal goal; however, the corporation has assembled a board and is beginning to establish itself as an organization.

Moving forward, the GTTA will undertake initiatives such as:

- implementing a GTA fare card system, which would enable commuters to travel on public transit from Durham Region to Hamilton using a single card;
- integrating municipal and regional transit planning, and coordinating fares and transit service delivery, in an effort to improve convenience for commuters;
- coordinating the purchase of transit vehicles on behalf of municipalities;
- managing GO Transit; and
- developing and submitting an annual capital plan and investment strategy.

The GTTA will be governed, primarily, by the province and representatives of regional municipalities in the GTA. To create the seamless transit network envisaged by the GGH Plan, a highly efficient and effective agent of change will be required. It remains to be seen whether the GTTA will succeed with the task of effectively coordinating so many different bodies, each with their own local needs and interests.

Highways still being built

Along with transit upgrades, highway network expansion will remain a major part of transportation planning in Southern Ontario. The GGH Plan included three major transportation corridors. These corridors would accommodate:

- the extension of Highway 407 east to Highway 35/115;
- a new east-west highway between Guelph and southern York Region; and
- a new mid-peninsular highway from the western GTA to the U.S. border near Fort Erie.

These projects will result in substantial losses of green space and agricultural land in the Greenbelt and Oak Ridges Moraine. Building these highways or extensions raises a number of complex questions: Will people and goods simply be traveling further each day (for example, between the GTA and communities outside the Greenbelt Plan Area, such as Guelph)? Can access to certain highways be controlled to make them better freight corridors (for example, by limiting the number of interchanges)? Or will these highways quickly become as congested as other GGH highways?

On the same day in June 2006 that the GGH Plan was announced, the Ministry of Transportation (MTO) also announced its Five-Year Plan for Southern Ontario Highways. Key construction projects in the plan include:

- widening Highway 401 from Woodstock to Cambridge;
- instituting high occupancy vehicle (HOV) lanes on the Queen Elizabeth Way from Oakville to Burlington and along Highway 417 in Ottawa; and
- widening Highway 7 near Ottawa.

To some degree, all new road surfaces and road widenings enable and encourage residents and businesses to continue to rely on road vehicles for mobility and freight transport.

More transit and *more highways*

On March 6, 2007, the federal and provincial governments announced a combined investment in public transit and highway infrastructure projects for the GTA worth close to $4.5 billion (when contributions from GTA municipalities are included). Transit upgrades included a subway line extension from the City of Toronto into York Region, and improvements to the transit systems of Brampton, Mississauga, York and Durham Regions. Along with the investment in the public transit network, MTO agreed to invest in three highway projects: extensions to Highway 407, Highway 404 and Highway 7.

Road Expansion: Impact on Wetlands

New roads, particularly the multi-lane 400-series highways, can have a profound impact on green spaces. The preferred alignment and most economical method of road construction is frequently a straight line – that being, by definition, the shortest distance between two points. This approach usually results in the alignment passing through green space at some point. Natural heritage features, such as provincially significant wetlands (protected under the 2005 PPS), are not exempt from encroachment. For example, the approved alignment of the northeasterly extension of Highway 404 in northern York Region crosses several such wetlands; it was not possible to find a socially and economically acceptable route that avoided all natural heritage features. For more on the need for wetland protection, see Wetland article in this section of the Annual Report.

Adapted from: Greenlands in the central Ontario zone. Neptis Foundation

A purportedly "balanced" approach to investing in both highway and transit infrastructure is not likely to achieve the GGH Plan's landscape protection goals. The Ontario government's 2007 budget dedicates $6.5 billion to the provincial highway system and $4.5 billion to transit improvements. Preventing further infringement on agricultural and green space by road-based transportation will be difficult if the majority of transportation spending continues to be dedicated to highway and road expansion. Additional transit spending promises were announced by the Ontario government in June 2007 (see Ministries' Joint Comment for further details).

Transit use follows from urban form

A good illustration of the importance of transit in containing urban sprawl and safeguarding green space is a comparison of the transit usage rates in the GTA inside and outside the boundaries of the City of Toronto. In 2006, about 85 to 90 per cent of all transit rides in the GTA were taken on the transit system of the City of Toronto (operated by the Toronto Transit Commission). Transit ridership in those GTA areas outside of the City of Toronto accounts for just 10 to 15 per cent of the overall total. The reason? The City of Toronto has population densities that are double or triple those of nearby communities, and higher densities greatly support transit ridership. Urban form has a significant bearing on transit use and the ability to provide efficient and more economical transit services.

Over the long term, the GGH Plan is seeking densities for satellite communities that are about half of the densities set for the City of Toronto. Furthermore, the GGH Plan envisages that 60 per cent of new development will continue on greenfield sites and this development must achieve only one-quarter of the density of a major urban area; this density is only slightly higher than that achieved in recently built suburbs. Most transit experts agree that these densities are not sufficient to succeed in significantly raising transit ridership. If communities in Southern Ontario do not achieve a dramatically more compact and integrated urban form, then these communities likely will not succeed in raising transit ridership, improving rates of walking and cycling, diminishing automobile use and, thereby, curbing the need for further road expansion.

Summary and ECO comments

The ECO welcomes Ontario's efforts to harmonize future growth and development with environmental protection (and other) objectives – such an approach is much better than unplanned growth. However, highly effective efforts to intensify urban settlement patterns, prioritize transit use, and reduce the use of automobiles will be critical to ensuring that existing green spaces and agricultural areas in the GGH are not further fragmented by road expansion.

Changes to our 'car-centric' system of mobility are required not only for the protection of natural heritage and farm lands from development, but to address the mounting problem of traffic congestion with its attendant costs in time and money. To ease congestion on Southern Ontario's road network, the ECO believes that even greater changes will be needed: measures like prioritizing transit over automobile use in a large portion of the GGH, and making much greater use of rail and, where viable, water transport for freight transport.

If urban growth and road network expansion continues under a 'business-as-usual' scenario – that is, one vehicle for every two residents – then another million automobiles will appear on the province's roads by 2020 and more highways will be needed, particularly in Southern Ontario, to accommodate them. The GGH Plan was developed, in part, to advance a different scenario for the region: one with "an integrated transportation network" that allows "for easy travel both within and between urban centres throughout the region," and emphasizes multiple modes of transportation.

Reviewers of the GGH Plan have emphasized a need to monitor the Plan's implementation. The GGH Plan includes many laudable principles, but also some conflicting objectives, such as the need to preserve green space versus the need to expand Ontario's road network. To achieve the goal of green space protection, the ECO believes that the GGH Plan must prevent road network expansion from gradually etching away existing green and agricultural areas across Southern Ontario. Since the GGH Plan is long-term and subject to periodic revision, the province should monitor certain trends to gauge its success and make adjustments sooner, rather than later. The ECO believes the GGH Plan will not succeed unless it can meet certain tests, and demonstrate continuous improvement:

- Contain road network expansion – the GGH Plan needs to avert any further plans for new highways and/or highway expansion projects, aside from those already announced in the region, over the working life of the Plan.
- Improve intensification and density targets – the Plan's goal of allocating 40 per cent of new-builds in existing urban areas is not substantively different than a business-as-usual approach. Also, the province needs to revisit the density targets of those centers that are already very close to their target and seek ways to adjust those targets upward.
- Substantially increase transit use in the GGH – various modeling scenarios indicate that transit usage in those areas outside of the City of Toronto is unlikely to change appreciably beyond its current rate of 10 to15 per cent of all trips made. To be successful, the GGH Plan needs to improve this rate significantly, as well as a means to measure the progress in making the transportation system affordable, efficient and environmentally sustainable.

Based on our review, the ECO believes that the province will encounter increasing difficulty in the years ahead reconciling the goals of green space protection in the GGH and providing for personal mobility, if mobility is achieved mainly through highway and automobile-based travel. These two competing priorities will continue to clash and cause further environmental degradation in the GGH unless improvements are made to the GGH Plan.

Protecting Wetlands, OR Draining for Development?

What good are wetlands?

Wetlands are critically important ecosystems, providing: water storage, storm protection and flood mitigation, shoreline stabilization and erosion control, groundwater recharge, and water purification through retention of nutrients, sediments, and pollutants. Wetland conservation can help maintain hydrologic flow patterns and mitigate some of the environmental impacts of climate change. In addition, wetlands provide critical habitat and breeding grounds for many species plants and animals, including a number of species at risk.

For over twenty years, Ontario provincial policy has stated that wetlands should be protected. However, wetlands continue to lose out to other priorities, such as residential development, road building, and new pits and quarries, depriving future generations of the benefits that wetlands could provide.

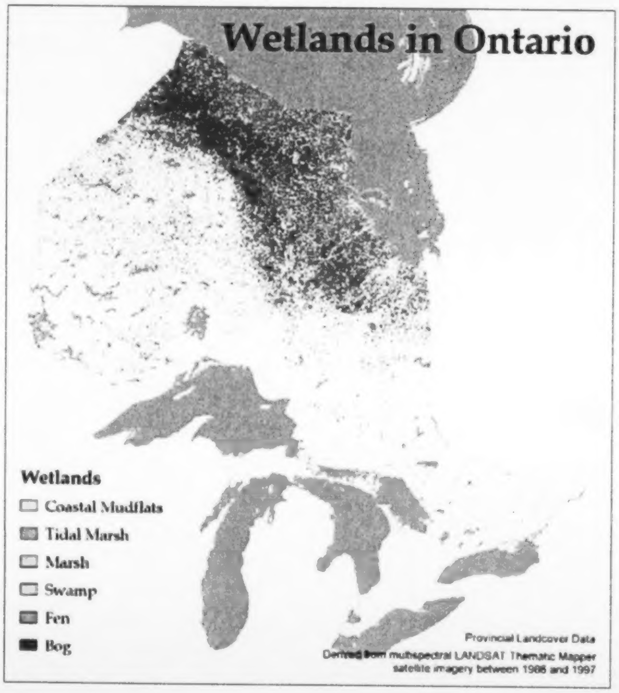
Loss of wetland area and quality in Ontario

Wetlands make up about one-third of the province's land base, and are most prevalent in the far North (see map 2). Wetland losses have been most severe in Southern Ontario: by 1982, about 70 per cent of the wetlands present prior to European settlement had been destroyed, and some areas of Southern Ontario have lost almost all their wetlands. Within the Great Lakes Basin, an estimated 65 per cent of coastal wetlands have been converted to other land uses.

The major threats to wetlands include drainage for agriculture, development and road construction. Other stressors include large water-takings, contaminated runoff and invasive species. Dredging, urban and cottage development, and the manipulation of lake levels threaten coastal wetlands.

Existing regulatory framework provides inadequate protection

Canada is a signatory to the 1971 Ramsar Convention on Wetlands, and eight wetlands in Ontario have been listed as internationally significant Ramsar sites. Ontario also participates with other governments and private partners in various wetlands plans and programs, such as the Great Lakes Wetlands Conservation Action Plan. These joint efforts have produced many worthwhile projects to restore and rehabilitate wetlands. None of the agreements or plans, however, contains regulatory protections for wetlands.

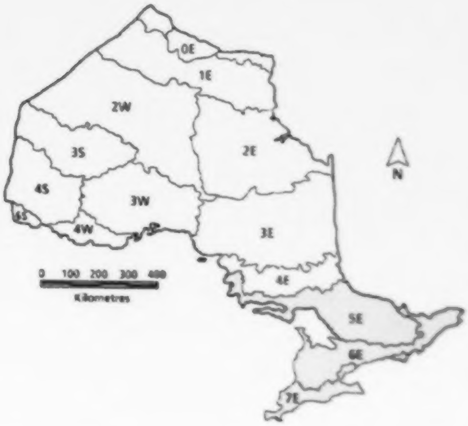

Wetlands in Ontario
Wetlands
▭ Coastal Mudflats
▨ Tidal Marsh
▭ Marsh
▭ Swamp
▨ Fen
■ Bog
Provincial Landcover Data
Derived from multispectral LANDSAT Thematic Mapper satellite imagery between 1986 and 1997

There is no provincial or federal legislation that specifically requires protection of wetlands in Ontario. Indirect protection is provided to certain wetlands through some Ontario legislation such as the *Planning Act* and *Conservation Authorities Act,* as described below. Other legislation such as the *Tile Drainage Act* and *Drainage Act*, actually work against wetland protection by permitting drainage if requested by landowners.

Protections for wetlands in Ontario are found primarily in policy documents: the 2005 Provincial Policy Statement (PPS) issued under the *Planning Act,* and other provincial land use plans, such as the Oak Ridges Moraine Conservation Plan (ORMCP) and the Greenbelt (GB) Plan. Ontario's policy approach to protecting wetlands through the land-use planning system has several weaknesses:

- exemptions allow for infrastructure works, agriculture and some resource extraction activities;
- protection depends on evaluations and official designation in land use plans;
- responsibility and jurisdiction is fragmented; and
- decision-makers are permitted too much discretion in applying the policies.

| Site Regions of Ontario |



The 2005 PPS prohibits development and site alteration in "significant wetlands" (also referred to as provincially significant wetlands or PSWs) in much of Southern and central Ontario. It allows development on lands adjacent to PSWs, and in PSWs in Northern Ontario, but only if it has been demonstrated that there will be no negative impacts on the wetlands or their ecological functions. The 2005 PPS, unlike earlier provincial policy on wetlands, does not address locally significant wetlands or wetlands that have not yet been evaluated for their significance.

The 2005 PPS introduced two major improvements for wetlands protection over the 1997 version. First, the protection line for significant wetlands was moved north to include Site Region 5E (see map 3). Second, significant coastal wetlands were given the same protections as significant wetlands.

Exemptions allow destruction of wetlands

Over time the province has retreated from 2005 PPS prohibitions on development by changing the definition of "development". The ECO's review of the 2005 PPS noted that infrastructure and drainage works are permitted within PSWs. The infrastructure exemption includes sewage and water systems, waste management systems, electric power generation and transmission, pipelines, transit and roads, and associated facilities. The 2005 PPS gives clear priority to transportation and infrastructure corridors over PSWs.

Roads have well-documented impacts reaching far beyond their physical footprints. For example, they disrupt hydrology, cause significant direct wildlife mortality, and bar access to critical breeding and hibernation sites. The MTO's Environmental Standards and Practices User Guide explains how the ministry and its contractors should address wetlands in highway design and construction. The guide acknowledges major impacts to wetlands, including:

- encroaching upon a wetland;
- changing the surface water balance of wetlands;
- changing the groundwater balance of wetlands; and
- discharging impacted water (sediment and other contaminants, such as road salt) into wetlands.

It also sets out "possible management options", such as avoiding wetlands, reducing the footprint of the highway, building overpasses, or restoring or replacing wetlands. The Guide then describes how difficult, expensive or unsuccessful those options are.

The ECO is aware of many examples of provincial highways and municipal roads built or expanded into PSWs, which were approved under various environmental assessment processes. A small sample includes:

- a road extension through the Bear Creek Swamp in Barrie;
- the expansion of the St. John's Sideroad through the McKenzie Marsh in Aurora;
- the extension of Bayview Avenue through the Wilcox-St. George PSW in Richmond Hill; and
- the Redhill Creek Expressway through Van Wagner's Marsh in Hamilton.

As noted on page 33, new provincial highways and highway expansions are still being routed through PSWs and having a major impact on Southern Ontario's natural areas.

Failure to identify wetlands leaves them unprotected

Another major contributor to wetland destruction is that most protections (such as the 2005 PPS, Conservation Land Tax Incentive Program, and the siting of pits and quarries) apply only to PSWs. Some municipalities and conservation authorities go further and include protections for locally significant wetlands, but decision-makers are unlikely – and to some extent unable – to use tools that they have available to protect wetlands unless the wetland has been identified as significant by MNR.

Significant wetlands are defined in the 2005 PPS as areas "identified as provincially significant" by the MNR "using evaluation procedures established by the Province, as amended from time to time." MNR developed the Ontario Wetlands Evaluation System (OWES) to evaluate the significance of wetlands. MNR is responsible for the identification, whether the evaluation is carried out by ministry staff or others using MNR's manuals.

The OWES manuals set out an evaluation process similar to that used in many other jurisdictions. Over 50 variables are analyzed and scored; these variables are divided into four categories: biological, social, hydrologic and special features. Boundaries are delineated through a combination of aerial photography analysis and field checking. The system is scientifically valid, but is labour intensive and quite expensive.

Landowners and industry associations have raised issues about OWES, particularly the process used to identify adjacent wetlands as part of a complex. Other jurisdictions are moving toward "advance identification" processes, using computerized mapping techniques as a cost-effective way to identify wetlands in advance of development applications and evaluation. For discussion of the potential of enhanced mapping techniques developed by MNR and the not-for-profit conservation organization, Ducks Unlimited in Ontario, see pages 200–204 in the Supplement to this Annual Report.

Need for Review of Wetland Policies

A 2006 *EBR* application asked for a review of the 2005 PPS and MNR's process for evaluating wetlands. The applicants suggested that the PPS wetlands policies are "meaningless" because development is being approved in wetlands that have not been evaluated. For example, 99 per cent of wetlands in Haliburton County have not been evaluated or identified by MNR. MMAH and MNR decided not to carry out the review. The ECO agrees with the applicants' concerns, and calls for a public review of the PPS, the One Window Provincial Planning System and MNR's wetland evaluation program. See the ECO review of this application on pages 200–204 of the Supplement to this Annual Report for more detail.

MNR staff members acknowledge that fewer than one per cent of the wetlands in central Ontario have been evaluated, and that the vast majority of wetlands in the province – particularly, north and east of Peterborough – are unevaluated. Even in southern regions, where MNR has conducted about 2,000 wetland evaluations (primarily in the 1980s), there are many wetlands that should be evaluated or re-evaluated for their significance. In recent years, MNR has not had sufficient resources to complete wetland evaluations.

There have been several notable cases where citizens and groups have had to pay out of their own funds for a wetland evaluation, then asked MNR to identify a wetland as significant, in order to protect it from proposed development. In one case, a resident was successful in his appeal to the OMB to deny a proposed golf course in Marshfield Woods, a significant wetland in the Town of Essex, and have the lands rezoned to a protective wetland designation. In another recent example, local residents concerned about a proposed quarry in the Mount Nemo area of the Niagara Escarpment Plan commissioned a wetland evaluation, which resulted in MNR designating a series of 15 connected wetlands as a PSW complex.

No mandatory buffers

The 2005 PPS prohibits development in areas adjacent to PSWs, unless it has been demonstrated that there will be no negative impacts on the wetlands or their ecological functions; however, the 2005 PPS no longer quantifies the term "adjacent." In a controversial 2006 decision on a quarry expansion within the Niagara Escarpment Plan Area, the provincial Cabinet allowed quarrying within 15 and 25 metres of provincially significant wetlands.

'One window' planning system shuts out the MNR

Ontario's land use planning system was reformed in the mid-1990s to delegate most planning decisions to municipalities, within a framework of provincial legislation and policy. At the same time, the role of most provincial ministries, other than the Ministry of Municipal Affairs and Housing (MMAH), was greatly diminished under the "One Window" protocol.

MMAH is the "One Window" for planning matters, and is the only provincial ministry entitled to:
- receive planning notices;
- decide whether other ministries will provide comments;
- determine a "provincial interest" in a planning matter,
- launch an appeal; or
- order a municipality to amend an official plan to conform to the PPS.

MNR's role is limited to identifying significant wetlands. Under previous provincial wetland policies, MNR reviewed all proposed development applications affecting wetlands; today, MNR comments on very few planning proposals, and only if invited to by MMAH.

The ECO reviewed a sample of OMB decisions involving natural heritage policies in 2001 and again in 2007, finding that the OMB was more likely to protect wetlands when MNR staff appeared to provide evidence. MNR staff members were rarely involved, however, and their lack of direct participation contributed to rulings against wetlands protection. The ECO concludes that the current PPS implementation process – in particular, the One Window protocol – has not been effective in protecting wetlands under the planning system. The ECO urges MMAH to review the wetlands policies of the planning system and 2005 PPS, and to review the One Window protocol, with particular regard to restoring MNR's involvement in municipal planning.

Death by a thousand cuts

Even wetlands already identified by MNR are threatened, because decision-makers have discretion to consider or protect even designated PSWs at several stages of the planning process. First, some municipalities have been reluctant to designate PSWs in their official plans or zoning by-laws, leaving the lands zoned for development. The City of Ottawa recently halted its process to designate 20 newly-identified PSWs in its official plan, and is planning to drain some of the areas because of landowner opposition to designation. Some landowners in various areas across Southern Ontario have gone as far as deliberately destroying the wetland features of their properties to avoid designation.

Application of the 2005 PPS protections for wetlands may be strengthened in the future by recent reforms of the planning system, (see pages 107–112 of this Annual Report and pages 23–35 of the Supplement). These reforms strengthen requirements to update official plans and accompanying zoning bylaws to be consistent with the PPS, and require decisions to be consistent with the PPS in effect at the time of the decision, rather than the date when the application commenced. New limits on appeal rights, however, may make it more difficult for communities and public interest groups to appeal decisions that affect wetlands.

Regional land use plans provide additional protections

In addition to the 2005 PPS, which is applied across Ontario, there are a number of area-specific land use plans such as the Niagara Escarpment Plan (NEP), ORMCP and the GB Plan, which contain protections for wetlands. The strongest protection for wetlands in Ontario is provided by the 2002 ORCMP which sets out requirements for all wetlands, not just PSWs. The GB Plan also includes special policies for all wetlands, but then allows aggregate operations in most wetlands, prohibiting them only in PSWs. This still provides a more stringent prohibition on pits and quarries within PSWs in the GB Plan area than anywhere else in Southern Ontario.

Conservation authorities have the potential to protect wetlands

Conservation Authorities have new powers under the *Conservation Authorities Act* to regulate development and interference with wetlands. In 2004, MNR approved a regulation that requires CAs to prohibit development in wetlands, and prohibit the changing or interfering *in any way* with a wetland, although a CA can provide written permission to do so. The Act provides much broader powers than the 2005 PPS, even covering drainage activities and infrastructure development, but so far it has been implemented unevenly by individual CAs.

It was expected that CAs would regulate and protect all wetlands, not just those that are identified as provincially significant. MNR says that 18 CAs regulate lands within 120 metres of all wetlands and the remaining 18 CAs regulate lands within 120 metres of PSWs and within 30 metres of all other evaluated wetlands. The regulations for each CA, passed in 2006, cover different types and sizes of wetlands and adjacent areas. The Toronto and Region Conservation Authority has included wetlands as small as 0.5 ha and regulated development within 120 metres around all PSWs and all wetlands in the Oak Ridges Moraine. It appears that other CAs are not applying the regulation to many wetlands, either because of a lack of resources or a lack of political will. For example, the Eastern Ontario CAs have "made a policy decision that only wetlands designated as provincially significant and appearing on approved Official Plan schedules are subject to the regulation." One CA in the Ottawa area is presently applying the wetland regulation within only one of the fifteen municipalities in its jurisdiction.

Poor information about wetlands

Ontario has poor information on wetlands and their status. The most recent comprehensive account of wetland loss across Southern Ontario is over 20 years old, although there are several recent studies of wetland losses in particular regions.

The ECO urged provincial ministries in 2000 to improve their mapping and analysis of the status of natural heritage features, such as wetlands. MNR developed the Southern Ontario Land Resources Information System (SOLRIS), updating existing geospatial base data with satellite and aerial photography to produce an inventory of natural, rural and urban areas. Unfortunately, implementation of this promising project has been slow and impeded by insufficient funding. As of April 2007, MNR has only released SOLRIS mapping for the GGH, and MNR has not yet conducted any comprehensive analysis of wetlands using the updated data. Further study of trends in wetland loss is necessary to understand the key threats and most effective policies to mitigate those threats.

Many of the government's recent regulatory and policy changes could improve the protection of wetlands but, combined with the existing weaknesses described above, these new efforts may not be sufficient. MNR and MMAH must monitor and study wetland loss and the impacts of the 2005 PPS policies and other plans in order to assess their effectiveness before the next scheduled PPS review and the next 10-year review of the regional land use plans.

No strategic plan for wetlands

MNR first informed the ECO in 2001 that it was preparing a strategic plan for wetlands. A draft strategic plan has been prepared, but it has not been approved or released. At the same time, however, MNR is revising its OWES manuals in response to concerns from landowners and the aggregate industry. The little information MNR has provided about the OWES review suggest that, in future, the number of wetlands identified as provincially significant may be reduced because the rules allowing the grouping or "complexing" of a number of smaller interacting wetlands may be changed. MNR's review is not public.

The ECO urges MNR to release its draft Wetlands Strategy for public comment, and suggests that a wetland strategy should include better carrots, as well as sticks. MNR's existing stewardship and financial incentive programs do not seem to be sufficient to counteract the many strong pressures to develop wetlands. Other jurisdictions, such as the U.S., have adopted more aggressive wetland conservation targets and budgets, and offer greater incentives to landowners to promote conservation. MNR should consider improving existing conservation incentive programs and should fund additional land acquisition for threatened wetlands.

Summary and ECO comment

The ECO urges the province to review and improve its regulatory framework for protecting wetlands; the province should also improve implementation of that strengthened framework by clarifying the roles and responsibilities of provincial ministries. In the meantime, the province needs to ensure that all steps necessary to protect wetlands under the current system are implemented, including the following:

- Speed up wetlands evaluations in Site Region 5E and re-evaluations in 6E and 7E, as well as evaluations of significant coastal wetlands. To facilitate evaluations, alternate methods (such as enhanced GIS mapping and analysis techniques) should be approved.
- Improve the guidance and technical assistance provided by MNR to municipalities by updating the 1999 Natural Heritage Reference Manual and finalizing guidance regarding wetlands under the Greenbelt Plan.
- Ensure that identified wetlands are incorporated into municipal planning documents and maps, as well as decisions by municipalities, ministries and the OMB.

| RECOMMENDATION 1 |

The ECO recommends that MNR significantly speed up the process of wetland identification and evaluation and ensure that Provincially Significant Wetlands are incorporated into municipal official plans.

| RECOMMENDATION 2 |

The ECO recommends that MMAH amend the Provincial Policy Statement to prohibit new infrastructure such as highways in Provincially Significant Wetlands unless there are no reasonable alternatives and it has been demonstrated that there will be no negative impacts on their ecological functions.

Preserving Natural Areas, OR Extracting Aggregates Wherever They Lie?

Aggregate pits and quarries (that produce stone, sand and gravel) require approval from the Ministry of Natural Resources (MNR) under the *Aggregate Resources Act (ARA)*. They often require additional approval under other provincial statutes, such as the *Planning Act*. The siting of new pits and quarries, including the expansion of existing sites, is one of the most difficult and controversial land use decisions being taken in Ontario today, in part, because of conflicting priorities in provincial policy.

Conflicts with other land uses and community interests are heightened because of a provincial policy that states aggregates should be extracted as close to market as possible. The inherent conflicts between aggregate production and the protection of natural areas arise because many of the highest quality aggregate deposits in Southern Ontario are found in areas of great ecological and social significance. More than 75 per cent of aggregates used in the Greenbelt area come from the Niagara Escarpment and the Oak Ridges Moraine plan areas.

In the past four years, the ECO has received a number of applications for review of the current regulatory framework for aggregate extraction. Applicants have raised the need for an aggregates conservation strategy, improved rehabilitation policies, revisions to the provincial policy statements, and new procedures for processing applications.

The ECO also receives many calls and letters from the public and municipal officials expressing concerns about the process used to permit new sites and expand existing sites. Unfortunately, there is not much the ECO can do in these situations except to explain the opportunities for public comment and appeal under various laws, including the *EBR*. The ECO has observed over the years that each application moves inexorably towards approval, despite the potential environmental impacts and the legitimate concerns raised by municipalities, citizen groups and individuals.

What is the true state of our aggregates resources?

The aggregate industry argues that it is misunderstood, and that public misconceptions about the industry are making it more difficult to get approval for new sites. The Ontario Stone, Sand and Gravel Association (OSSGA) and the MNR both state that there is a critical need for new licensed supplies of aggregate, because depletion of existing sources is significantly outpacing the licensing of new sources. They also project that demand will continue to grow. MNR has stated that because of projected population growth in Southern Ontario, "even with enhanced aggregate conservation measures (recycling, etc.) and growth management initiatives, the demand for aggregates will continue to grow."

It is difficult to evaluate the validity of these statements because of the lack of publicly available data on aggregate demand and supply. The ECO has been calling for several years for MNR to update its 1992 State of the Resource Report, and to provide up-to-date information on aggregate reserves and consumption trends. MNR, in partnership with The Ontario Aggregate Resources Corporation (TOARC), has initiated a study to update elements of a 1992 study on conservation and recycling. MNR anticipates the study will be completed by the end of 2007, as described in the Ministry Progress section of this Annual Report, page 185.

The ECO has also recommended that MNR develop an aggregates conservation strategy. MNR informed the ECO in February 2007 that it remains committed to "contributing to" an aggregate resources strategy. However, the ministry considers completion of a recycling study as a prerequisite step before developing the larger aggregate resources strategy.

The Greater Golden Horseshoe Growth Plan states that the Ministry of Public Infrastructure Renewal (MPIR) and MNR will work with municipalities, producers of aggregates and other stakeholders to:
- identify significant mineral aggregate resources for the GGH;
- develop a long-term strategy for wise use and conservation; and
- identify opportunities for recycling and coordinated approaches to rehabilitation.

In March 2007, MPIR staff informed the ECO that no progress was made on this initiative during the 2006/2007 reporting year.

Despite the lack of information on supply and demand, the province made a significant change to the Provincial Policy Statement (2005), issued under the *Planning Act*, regarding the need for aggregates. The 2005 PPS states that, "Demonstration of need for mineral aggregate resources, including any type of supply/demand analysis, shall not be required, notwithstanding the availability, designation or licensing for extraction of mineral aggregate resources locally or elsewhere."

Some municipalities have argued that they wouldn't approve any other land use without full and open justification of the need. Even in areas of the province where the municipality and the public know that there are ample reserves, the municipality cannot require an applicant to demonstrate need.

Do we need to develop new "greenfield" quarries in protected areas?

Pits and quarries are allowed almost everywhere in Ontario, under certain conditions. Even within the Niagara Escarpment Plan (NEP), Oak Ridges Moraine Conservation Plan (ORMCP) and Greenbelt (GB) Plan, very little land is off-limits. The 1985 NEP allows new pits and quarries in the largest land use zone with an amendment to the Plan and, to date, every application for a new or expanded operation has been granted. The 2002 ORMCP allows new pits and quarries within all but the most protective zone, and this will be re-examined during the first 10-year review of the plan. The 2005 GB Plan allows pits and quarries in all areas except for provincially significant wetlands, some woodlands and endangered species habitat.

These plans all include additional requirements for applications and rehabilitation, but the assumption is that environmental "constraints" can be identified and mitigated through engineering solutions. If impacts can't be mitigated, other land may be exchanged or added to Plan areas to compensate for the loss of protected areas or functions. In a 2005 editorial, the Environmental Commissioner posed some fundamental questions, including whether we need to develop more "greenfield" quarries in ecologically sensitive locations, such as the Niagara Escarpment and Oak Ridges Moraine.

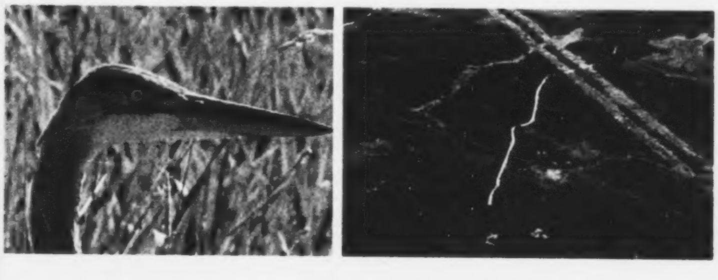
Pits and quarries are not an interim land use

The aggregate industry and provincial government take the position that pits and quarries are an "interim land use," because sites are to be rehabilitated into productive uses. The ECO acknowledges that some individual sites have been successfully rehabilitated, but a recent *EBR* review of rehabilitation has confirmed that most operators are not conducting progressive or final rehabilitation as required. (Further discussion of this issue is provided on pages 139–144 of this Annual Report.)

Another reason to challenge the concept of an "interim land use" is that sites are rarely returned to their original condition. More likely, pits are converted to housing or golf courses, and if a quarry has gone below the water table, the site will be permanently flooded, resulting in a man-made lake. Some quarries will require manipulation of water levels in perpetuity.

The term "interim" also suggests "short-term," but the impact of aggregate operations on the environment and communities is rarely that. The Greenbelt Task Force report on aggregates noted that most existing quarries in the Greenbelt Plan Area are more than 50 years old. Adding the years needed to complete the necessary rehabilitation, land used for a quarry could be unavailable for any other use for many decades. It has been observed that "no reasonable person could consider this length of time an 'interim' use."

The NEP was established, in part, because of the impact of pits and quarries. Yet experience has shown that since 1985, no application for a new or expanded pit in the Niagara Escarpment Plan Area has been turned down, and the impacts of the pits and quarries that pre-dated the Plan continue. The Niagara Escarpment Commission has noted that, "Although called temporary, the majority of the pits inherited by the NEP at the time of its approval are still there and in many instances expanding or have plans to



expand. Rehabilitation for many is a long way away. From a cultural landscape perspective, or for people living in the vicinity, aggregate extraction is almost a lifetime issue."

One of the reasons the public is so concerned about new sites is because of problems with compliance at existing sites. Illustrating the scope of the problem, MNR recently completed an inventory of all existing pits and quarries in the Oak Ridges Moraine area to assess licensee compliance with the *ARA*. The results of the inventory indicated that 100 out of 121 sites had compliance problems.

Who has a say in approving pits and quarries?

Municipalities have expressed concern to the ECO for many years that they have little control over approvals for pits and quarries. "Red tape reduction" amendments to the *ARA* in 1999 essentially removed a municipality's power to restrict approval of pits and quarries. Municipalities across the province are trying different strategies to regulate aggregate operations, but these strategies are often stymied by the provincial government.

The MNR recently revised its manual of policies and procedures under the *ARA*, which sets out application procedures, requirements for environmental impact studies, and other policies. Public and agency comments focused on the inadequacy of environmental protections and frustration with the application processes. A summary of the ECO's review of the manual can be found on pages 113–118 of the Annual Report, with a more detailed review on pages 79–88 of the Supplement.

One notable concession by MNR was to revise the rules that apply when a company with an above-water table licence applies to extract aggregates below the water table. In the past, MNR often processed these applications as a "minor site plan amendment," and did not provide notification or an opportunity to comment to municipalities or the public. MNR responded to concerns by introducing a mandatory public/agency consultation opportunity on this type of site plan amendment. MNR did not change any of the other policies restricting substantive municipal input into aggregate siting decisions.

Case study: A proposed new quarry in the Greenbelt

As noted above, the ECO has received several applications for review requesting that the province amend the 2005 PPS aggregates policies to remove the apparent bias towards pits and quarries over other land uses. In all cases, the ministries – MNR and the Ministry of Municipal Affairs and Housing (MMAH) – have turned down these requests for review. In one recent application for review, the applicants made a very compelling case for a new early screening/evaluation mechanism, under the *ARA* and *Planning Act*, for proposed aggregate operations that require approvals under both Acts.

The applicants argue that the current regime includes an inherent presumption of development, where applications may be continually amended until they are finally approved. The applicants state that the existing approvals processes can take 10 years or more, and are difficult, complex, long and arduous. Participation requires an intensive investment of human, financial and other resources by the proponent, municipal and provincial agencies, and the public.

The applicants described their involvement with a proposed quarry in Flamborough, to illustrate "the extent of involvement necessary by citizens today despite the elected and public institutions designed to represent the public interest." The proposed quarry is already in the early stages of the municipal Official Plan Amendment process and other approvals processes, such as a permit-to-take-water (PTTW) under the *Environmental Protection Act*. The proposed quarry is located in the Natural Heritage System of the Greenbelt Plan and contains several provincially significant wetlands, significant woodlands and water resource features. The applicants point out that the impacts would not be interim; the proposed quarry would mean a permanent loss of hundreds of acres of farmland, since the planned rehabilitation option is development of a lake facility. The applicants believe that the proposal is incompatible with existing municipal plans and approved developments, including proximity to residential developments. They are also concerned about the potential impacts of the quarry on groundwater quality and quantity, since the site includes the recharge area for the Carlisle municipal wellheads and could affect wellhead protection areas.

Both MNR and MMAH turned down this application for review, stating that the existing regulatory regime is sufficient. MMAH pointed to recent amendments to the *Planning Act* (see the ECO's review on pages 107–112 of this Report), saying that application processes have been improved to allow municipalities to require pre-consultation. MNR said that the *ARA* already provides due process for public notification and consultation, as well as for the review of technical reports, to protect the environment.

The ECO will review the ministries' handling of this application in the 2007/2008 Annual Report, since the ministry responses were received in May 2007. Some of the necessary approvals have been posted on the Registry already (i.e., Hamilton's Rural Official Plan to be approved by MMAH, and a PTTW issued by MOE to test the company's water-pumping system), but there will be others (such as an *ARA* licence application to be considered by MNR). The ECO notes that MOE received more than 600 comments from individuals and organizations, including the City of Hamilton, on the proposed PTTW. The ECO may review some or all of the ministry decisions on these approvals in future Annual Reports.

Summary and ECO comment

The ECO urges the provincial government to reconcile its conflicting priorities between aggregate extraction and environmental protection. Specifically, the province should:

- make the aggregates strategy promised in the Growth Plan a high priority;

- give municipalities more say in the siting of pits and quarries; and
- develop a new mechanism to quickly screen out inappropriate proposals that should not proceed.

| RECOMMENDATION 3 |

The ECO recommends that the provincial government reconcile its conflicting priorities between aggregate extraction and environmental protection. Specifically, the province should develop a new mechanism within the ARA approvals process that screens out, at an early stage, proposals conflicting with identified natural heritage or source water protection values.

Growth and the Environment of Southern Ontario: Some Final Thoughts

As argued above, and in previous ECO Annual Reports, the landscapes of many parts of Southern Ontario have reached their capacity to accommodate additional infrastructure, housing and human populations. Current land development pressures are gobbling up valuable greenspace and agricultural lands. Infrastructure corridors for highways and utilities are bisecting wetlands and other natural heritage areas. Clearly, we are placing increasing demands on a finite landscape that is already extensively built up with human structures.

Land use planning processes in Southern Ontario were designed primarily in the 1970s and 1980s when the challenges faced were less complex in scope and size; today, those processes appear unable to respond to the growing threats to the ecological fabric of our landscapes. The 2005 PPS states that preserving wetlands, significant woodlands and agricultural lands are priorities, but it also asserts that the construction of highways, the removal of aggregates, and the building of pipelines for water supply are priorities. Moreover, the *Planning Act* and other planning processes mandated under the *EAA* and the *ARA* provide no effective mechanisms to reconcile these conflicting land uses.

In fact, most planning processes seem weighted in favour of extractive and destructive uses of the land over those that conserve natural or agricultural values. Approvals processes for a highway, a quarry or a pipeline often are deterministic by their nature. They start society down a path toward approving the proposed undertaking without sufficiently considering whether Ontario should be on that path in the first place. Following that path involves a tremendous expenditure of time and resources often focusing on attempts to mitigate the impacts of a permanent alteration of the natural landscape which may be beyond mitigation and unsustainable by nature. Meanwhile, the approval of the undertaking becomes increasingly inevitable.

Many municipalities across Southern Ontario are being required to dedicate an increasing level of resources to complex and intricate planning processes and projects that attempt to resolve these irreconcilable priorities. In some cases, they are being forced to begin planning for large water pipelines, major electricity transmission lines and other massive infrastructure projects in order to accommodate the projected population increases that federal and provincial agencies insist are coming.

To be sure, there have been many positive developments related to urban planning in the past seven years. The creation of the ORMCP and the GB Plan have steered growth away from these special resource areas and towards more appropriate growth centres in the GGH. The commitments announced by the Ontario government in June 2006 on reforming the environmental assessment process (discussed in this Annual Report on pages 92–96) should mean that municipal and private sector proponents are provided with early and clear guidance on the acceptability of particular infrastructure and projects. These initiatives are welcome and show that the Ontario government (as well as many municipalities) has recognized that the land development patterns that prevailed throughout the 20th century are not sustainable and cannot continue.

Unfortunately, most of Ontario's environmental laws and policies are premised on a case-by-case review and approval for new projects, such as aggregate pits, municipal roads, sewers and highways. These approval processes have become intellectually dishonest because they do not include an *a priori* discussion of the need for the undertaking under consideration. Nor do they permit a similar public debate about the conflicting consumptive versus natural heritage priorities involved. Projects are often approved and proceed, sometimes with minor or major conditions attached, despite the efforts of environmental groups and local residents to challenge their efficacy and long-term sustainability. Often, the approval processes degrade into a battle where opponents of an undertaking pursue proxy issues, such as the possible presence of an endangered species, because the larger issues cannot be discussed. This is a path to frustration, waste and delay. The conflicts that emerge in these local planning battles often generate very high transaction and financial costs for the individuals, families, community groups and local officials involved, and mainly benefit the lawyers and consultants involved in the disputes or in the necessary approval hearings before the OMB, Environmental Review Tribunal (ERT) or other tribunals.

In addition, there appears to be no practical opportunities for local residents and ENGOs to challenge the inexorable logic of the land development process and the assumptions that it seems to be based on, including appropriate rates of population growth. For example, it appears to be a foregone conclusion that development always generates societal benefits in terms of positive economic returns, employment opportunities, higher property values, and so on. This means that it is often difficult to convince planning approval authorities that other values, such as the protection of natural heritage, are equally worthy of consideration.

Another prevalent assumption is that monitoring, mitigation measures and other environmental planning techniques can address the long-term problems associated with these large projects and human development pressure. While it is certainly true that mitigation can serve to reduce many impacts, environmental planning techniques cannot undo the long-term destruction of natural heritage features, greenspaces and agricultural land in Southern Ontario. As documented in previous ECO Annual Reports, the province probably already has permanently reduced its capacity to grow tender fruits and other valuable agricultural commodities (notwithstanding the recent GB Plan restrictions). Some groundwater aquifers are already tapped to their limit. Moreover, natural heritage lands in many Southern Ontario communities are under tremendous pressure as development encroaches.

In 1989, the ORTEE developed guiding principles for future environmental and economic policies in Ontario (highlighted on pages 18–19 of this Report). These include anticipating and preventing environmental problems, and not destroying Ontario's environmental capital, such as its groundwater supplies or the soils and unique landscapes where tender fruits grow. The evidence presented here suggests that Ontario has not learned the lessons that flow from these principles, and it is time for a paradigm shift in its approach to environmental and economic planning. Many large projects in the GGH, such as water pipelines and new highways, would be revealed as untenable when measured against the ORTEE principles. Indeed, the ECO believes that in the near future these projects should be subject to a reverse onus standard – they must be assumed to be problematic and inherently unsustainable unless a significant weight of economic and environmental evidence shows that they can be implemented in an environmentally acceptable and appropriate manner.

The challenge for society will be to integrate fundamental principles of environmental sustainability into land use and infrastructure planning, to measure proposed projects against them, and to abide by the outcomes in the event certain projects do not pass muster.

For ministry comments, see page 208.

| RECOMMENDATION 4 |

The ECO recommends that MMAH work with MPIR to increase the GGH Plan's intensification and density targets above existing business-as-usual development targets.

Developing Priorities: The Challenge of Creating a Sustainable Planning System in Northern Ontario

Introduction

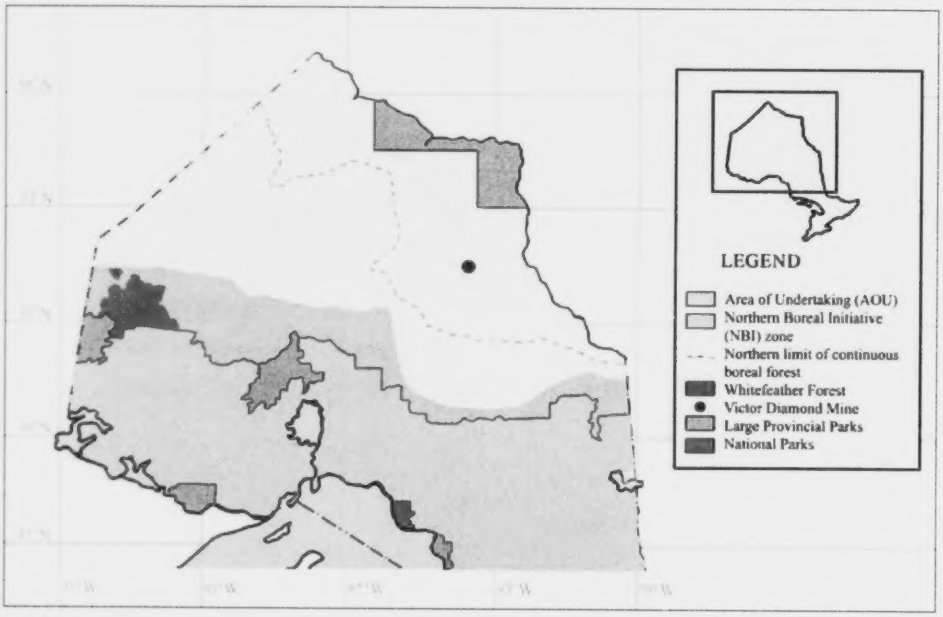
In this section, the ECO examines some of the central environmental issues relating to northern Ontario. This region is marked by a unique and fragile environment. The need for a more regionally based level of planning to protect this special environment is examined in several contexts, including a review of forest management and community land use planning for the north. Ontario's approach to mining in the province, including the Mineral Development Strategy for Ontario and the *Mining Act*, is also reviewed. Based on the findings of this review, the ECO suggests a new planning approach is needed for the north to address the realities of the 21st century.

Defining the "North"

In this section, the terms "the north" and "northern Ontario" refer to the region of the province that includes both the boreal forest and the tundra (see map). The boreal forest area in Ontario is subdivided into three areas:

- The Area of the Undertaking (AOU) – the southern portion of the boreal forest (south of the 51st parallel) where commercial forestry is currently permitted.
- The Northern Boreal Initiative (NBI) area – the middle portion of the boreal forest, to the north of the 51st parallel and the AOU.
- The northernmost portion of the boreal forest, north of the NBI area.

| **Planning Areas in Northern Ontario** |


LEGEND
Area of Undertaking (AOU)
Northern Boreal Initiative (NBI) zone
Northern limit of continuous boreal forest
Whitefeather Forest
Victor Diamond Mine
Large Provincial Parks
National Parks

The wild, wild north

There is no comprehensive land use planning process for northern Ontario. Detailed legislation, such as the *Planning Act*, provides clear planning guidance for the incorporated municipalities and privately-owned lands of the south. However, there is no equivalent land use planning system for the mostly Crown-owned lands and unorganized territories of the north.

The area north of the French and Mattawa Rivers is comprised of enormous swaths of Crown land, largely cloaked by the boreal forest. At almost 400,000 km^2, the boreal forest covers approximately one-third of Ontario's entire land-base. The northern portion of Ontario's boreal forest (i.e., the portion to the north of the 51st parallel) is relatively unimpaired by development, and holds global significance, identified by the World Resources Institute as frontier forests. The United Nations Environment Programme recognizes a part of this region as one of the world's few remaining closed canopy forests.

Despite the ecological importance of this region, no effective tools have been developed for the proper planning of the north. Currently, the *Public Lands Act*, which provides the Minister of Natural Resources with the legislative authority to manage provincial Crown lands, is the only tool available to guide northern planning. Unfortunately, this law provides the ministry with remarkably little direction or authority for land use planning. Accordingly, with little legislative guidance and no comprehensive planning system for northern Ontario, the result is an uneven patchwork of government approaches.

In contrast, the Ontario government released its Ontario's Living Legacy (OLL) strategy for the Area of the Undertaking (AOU) in the southern portion of the boreal forest in 1999, in an attempt to reconcile environmental protection with the interests of industry and other land uses. While not flawless, OLL is a commendable attempt at land use planning. However, it is constrained by its reliance on existing legislation that is not designed to achieve a comprehensive direction for Crown land. Currently, land use planning for the AOU is effectively being managed through the forest management process under the *Crown Forest Sustainability Act (CFSA)*.

For parts of the boreal forest to the north of the AOU, the Ministry of Natural Resources has initiated a land use planning process known as the Northern Boreal Initiative (NBI). However, this initiative is limited in scope as it is focused primarily on commercial forestry activities and does not address other important planning matters such as mining, utility corridors and recreational uses of the land. Further, there currently is no environmental assessment coverage for commercial forestry in the northern part of the boreal forest. Above the NBI area, in the far North of the province, virtually no land use planning has been undertaken at all.

Mineral development occurs throughout the north, including on the tundra of the Hudson Bay Lowlands. With very few constraints on where mining claims may be staked in the north, the Ontario government effectively confers preeminent status to mineral development. The *Mining Act* treats much of the province essentially as a vast frontier freely open to mineral exploration and development.

The existing planning and approval processes for the north typically operate in isolation from one another. This section of the Annual Report provides a number of examples that demonstrate how the ministries apply a "silo mentality" rather than taking a comprehensive approach to decision-making. This silo approach does not serve Ontarians effectively, nor does it provide adequate assurances of environmental protection in the quest for resource development.

The need for a comprehensive planning system for the north

Northern Ontario's unique and varied ecology merits, at least, the same standard of planning that applies to the rest of the province. The establishment of a comprehensive land use planning system for northern Ontario is critical to ensure that future decision-making is guided by sound principles, public scrutiny, and a precautionary approach to environmental protection. If action is not taken soon to embrace a new vision for the north, the consequences may be grave. Without effective planning, irreparable harm may be inflicted on the fragile northern environment. Moreover, harm to the natural environment may have significant negative impacts on the social and economic sustainability of northern communities.

The social and economic health of the north is directly tied to the integrity of the natural environment. Urban centres, including Sudbury, Timmins, Thunder Bay, and Sault Ste. Marie, as well as numerous smaller communities, depend on industries that extract and process the timber and mineral resources of the north. Northern Ontario is also home to dozens of First Nation communities, including those represented by the Nishnawbe-Aski Nation, Grand Council Treaty #3, and the Union of Ontario Indians, which have long relied on the natural resources of the north for their livelihood.

The ECO has been calling for the Ontario government to initiate a new approach to the regulation and planning of the north for many years now. For example, in our 2002/2003 Annual Report, the ECO recommended that "the Ministry of Natural Resources conduct gap analyses and develop objectives and targets in order to establish a protected areas network for the Northern Boreal Initiative area as a whole." In our 2005/2006 Annual Report, the ECO recommended that the Ministry of Natural Resources (MNR), the Ministry of Northern Development and Mines (MNDM), the Ministry of the Environment (MOE), and the Ministry of Energy (ENG) "consult the public on an integrated land use planning system for the northern boreal forest, including detailed environmental protection requirements that reflect the area's unique ecology."

Some members of government have taken up this call for a new planning approach. In March 2003, the then Leader of the Official Opposition, later elected as the Premier, promised to

> institute meaningful, broad-scale land-use planning for Ontario's Northern Boreal Forest before any new major development, including ensuring full participation by native communities. Land use planning must protect the ecological integrity of this natural treasure and help to provide a sustainable future for native people and northern communities.

Unfortunately, little comprehensive planning for the north has actually been done. Moreover, when MNR, MOE, MNDM, and ENG were recently asked to review the need for a new integrated land use planning system, through an *EBR* application, each of the four ministries stated that the public interest did not warrant such action.

The Ontario government has a duty to properly manage northern Crown lands on behalf of the citizens of Ontario. Several ministries – MNR, MOE, MNDM, and ENG – play an important role in meeting this duty to comprehensively plan for the north. Unfortunately, the ability of the ministries to effectively plan is seriously hampered by the absence of the necessary regulatory tools, mandates and resources to meet this challenge.

The Role of Ontario's Ministries in the North

MNR, MNDM, MOE and ENG each play an important role with respect to northern planning and northern development. The Ministry of Natural Resources plays the most central role in northern Ontario, as the steward of Ontario's protected areas, forests, fisheries, wildlife, mineral aggregates, and petroleum resources. MNR's strategic mission is "to manage our natural resources in an ecologically sustainable way to ensure that they are available for the enjoyment and use of future generations. The ministry is committed to conserving biodiversity and using natural resources in a sustainable manner."

MNR is responsible for regulating commercial forestry under the *Crown Forest Sustainability Act*. Ontario's forest industry directly employed 84,000 people, generating approximately $18.6 billion in revenue in 2005. MNR also manages flora and fauna under the *Fish and Wildlife Conservation Act* and the *Endangered Species Act*, as well as Crown lands, which make up 87 per cent of the province, under the *Public Lands Act*. In addition, Ontario's system of protected areas, which covers 8.7 million hectares, is managed by MNR, and the ministry has the added responsibility to maintain ecological integrity as the first management priority under the new *Provincial Parks and Conservation Reserves Act, 2006*. (For further discussion of this law, see pages 99–106 of this Annual Report.)

The mandate of the Ministry of Northern Development and Mines is "aimed at growing the northern Ontario economy" and creating "a strong, sustainable mineral industry by promoting investment and exploration." Historically, the responsibility for mineral development was held by MNR until 1985, when it was transferred to the then-named Ministry of Northern Affairs. The government replaced the term "Affairs" with "Development" to emphasize a commitment to greater social and economic development in the north and to promote the ministry's new role in encouraging mineral development.

MNDM administers a suite of legislation, most notably the *Mining Act*. The purpose of this legislation is "to encourage prospecting, staking and exploration for the development of mineral resources and to minimize adverse effects on the environment through rehabilitation of mining lands in Ontario." The value of Ontario's mineral production was approximately $9.4 billion in 2006, and mining in northern Ontario employed approximately 13,500 people. Ontario has 28 major mines actively producing precious metals, industrial metals and industrial minerals, as well as 14 mines producing gemstones. Additionally, there were more than 229,000 mining claims in good standing as of 2006.

The Ministry of the Environment is responsible for "protecting clean and safe air, land and water to ensure healthy communities, ecological protection and sustainable development for present and future generations of Ontarians." Among the many statutes MOE administers to meet this mandate are the *Environmental Protection Act* and the *Ontario Water Resources Act*, which (in part) regulate the discharge of contaminants into the environment.

MOE is responsible for issuing various approvals and permits, such as permits to take water and approvals to operate sewage facilities or to discharge emissions into the air. Of particular note, MOE is responsible for deciding whether to approve, deny or exempt new public sector projects, as well as some private sector projects, under the *Environmental Assessment Act (EAA)*. This responsibility is particularly relevant in the north, as many of the activities carried out, such as commercial forestry and hydroelectric development and transmission, are subject to the *EAA*. MOE has issued a declaration order exempting commercial forestry activities in the AOU from the requirement to undergo an individual environmental assessment under the *EAA*.

The Ministry of Energy also plays a role in the north with respect to energy supply, transmission and delivery. ENG's mandate includes a responsibility for ensuring that Ontario's electricity system functions at the highest level of reliability and productivity, and that "protecting the environment is a priority." For example, ENG is currently evaluating the development of a new energy supply initiative that would involve the construction of a major transmission line across Ontario's North, to carry electricity from new hydro-electric sites to be developed in Northern Manitoba into Ontario.

A Region of Continental Ecological Importance

The sheer size of northern Ontario makes it one of the few remaining places on earth where entire ecosystems – at a landscape-level – can function relatively unimpaired by human impacts. It is an ecological treasure. The manner in which the province plans and manages it is of the utmost importance, for its own sake and that of all Ontarians.

The boreal forest, as a whole, comprises 59 per cent of Ontario's forests and covers 49.8 million hectares. It is composed of various forest types, consisting of coniferous and deciduous trees, including white and black spruce, tamarack, balsam fir, jack pine, white birch and three species of poplar. North of the contiguous forest lies the Hudson Bay Lowlands, which contain a massive expanse of wetlands. This tundra covers an area of 25.7 million hectares, comprising both treed and open muskeg, and is dotted with hundreds of thousands of small lakes and ponds.

Northern Ontario has an ecological significance at a continental scale. A third of all northern bird species annually migrate there from Central and South America. More than 300 species of birds depend on the boreal forest as a breeding ground, including 80 per cent of all waterfowl species in North America. The boreal forest also plays a critical role in regulating climate change. Based on such factors, a recent independent study concluded that the total annual non-market value of boreal ecosystem services in the year 2002 across Canada was $93.2 billion.

These forest, tundra, and aquatic ecosystems support a great abundance of wildlife. Many of these species require vast amounts of space and have evolved to form complex inter-relationships, in addition to depending on natural disturbances, such as forest fires. Species that depend on these northern ecosystems for their survival which are most readily identifiable by the public include gray wolves, polar bears, and great grey owls.

There are several dozen species at risk – species whose survival is in jeopardy – that inhabit the forests, tundra, and aquatic ecosystems of northern Ontario. These represent a broad diversity of bird, fish, mammal, lichen, and plant species. Mammals at risk include the North American puma, the wolverine, and woodland

caribou. Significant bird species include the bald eagle, the American white pelican, and the short-eared gray owl. Aquatic species at risk include the aurora trout, the deepwater sculpin, and lake sturgeon.

Many species, like woodland caribou, serve as invaluable barometers to assess whether sustainable policy choices are being made in northern Ontario. A detailed discussion of woodland caribou as an indicator of the fragility of the north can be found on pages 75–81 of this Annual Report.

The Need to Systematically Plan for the North?

There is a groundswell of public concern about how the northern part of the province should be managed. Many stakeholders – ranging from First Nations to forestry companies to conservation organizations – have been united in their call for a new framework to protect much of the boreal and to ensure that land use planning is completed in advance of industrial development. Indeed, the federal Senate Subcommittee on the Boreal Forest stated in 1999 that

> Portions of Canada's remaining natural, undisturbed boreal forest and its areas of old growth are now at risk, from both climate change and over cutting. In addition, the demands and expectations placed on Canada's boreal forest have escalated to the point where they cannot all be met under the current management regime.

At a national level, this Senate report proposed that the boreal be divided into three land use classes. The Senate report proposed that 20 per cent of Canada's boreal be intensively managed for timber and fibre production, 60 per cent be managed less intensively for a wide variety of forest uses biodiversity conservation as the primary objective, and the remaining 20 per cent would be set de as protected areas.

Building on this idea, the partners of a coalition called the Canadian Boreal Initiative proposed in 2003 that half of Canada's boreal be managed for sustainable resource development and the other half be enshrined in a network of protected areas. Such proposals about how to manage the boreal need not be literally applied in northern Ontario, but they serve as an invaluable starting point for public debate and government action.

It is troubling that the Ontario government is resisting this tide of concern, particularly given that it is the single largest landholder in northern Ontario. In September 2005, an *EBR* application was filed that requested the creation of a comprehensive land use planning system for northern Ontario. The applicants asserted that a wide array of evidence suggests that a new approach was warranted, including the need for:

- incorporating ecological values into decision-making;
- properly engaging First Nations communities and the public at large;
- conducting thorough environmental assessments of proposed development projects;
- designating protected areas before resource allocations are made; and,
- addressing the cumulative impacts of proposed developments.

The Ontario government responded that it does not believe that such change is warranted, because it believes that the various approval processes currently in place are adequate. This *EBR* application is discussed at length on pages 204–211 of the Supplement to this Annual Report.

It is clear that the existing approval processes operate in isolation from one another, and they do not embody a comprehensive approach. The Ontario government, for example, has chosen to take a "one-window approach" using MNDM as the lead ministry for all major non-forestry industrial developments in the north. Unfortunately, environmental and land use planning issues are not parts of MNDM's core responsibilities or mandate. The consequence of such an approach is that environmental and land use planning concerns are of secondary importance and a lower priority than they ought to be.

MOE and Environmental Assessments North of the AOU

MOE believes that existing *Environmental Assessment Act* coverage is sufficient to address concerns regarding development in northern Ontario. However, the existing environmental assessment processes typically function in isolation from one another, failing to ensure sufficient environmental oversight or protection. Moreover, many of the individual environmental assessment processes are themselves inadequate. For example, MNDM has an interim Declaration Order allowing it to dispose of Crown resources, such as issuing mining licences and administering the *Mining Act*, without being required to conduct individual environmental assessments. Originally approved as a one-year interim order in 2003, it has twice been extended and now expires in June of 2008. It is not reassuring that MOE has repeatedly extended this interim Declaration Order based on MNDM's failure to prepare the required class EA.

It appears that MOE has chosen to limit its role in the north as being the administrator of the *EAA*. The ECO believes that MOE's mandate calls for a more proactive approach to environmental protection. Indeed, the core component of the ministry's strategic vision is to ensure "ecological protection and sustainable development for present and future generations." The ECO believes that this vision applies to the boreal forest and northern Ontario beyond simply having the ministry function as an approvals body on a case-by-case basis.

Land Use Planning in the Northern Boreal Initiative (NBI) Area

The *Crown Forest Sustainability Act* and Declaration Order MNR-71 under the *Environmental Assessment Act* are the legal basis for permitting commercial logging in Ontario. They operate under the assumption that forestry in the AOU, including the southern parts of the boreal forestry, is an ecologically sound activity. Similar approvals do not yet exist for areas north of the AOU.

The federal Senate Subcommittee on the Boreal Forest recommended in 1999 that "in those parts of the boreal forest approaching the tree line, where adequate silvicultural methods have not been developed, logging should not be allowed ... [and] cutting should be limited in old-growth sections of the boreal forest." In our 2002/2003 Annual Report, the ECO made a similar recommendation that MNR "should carry out a thorough assessment of forest management approaches that are ecologically suited to the northern boreal forest and make the research results available to the public." No such assessment has been made public as of September 2007.

In 2000, MNR established the Northern Boreal Initiative (NBI) for the portion of the boreal forest to the north of the AOU. The purpose of the NBI is to open up the NBI area to new commercial forestry and other forms of resource development, and to facilitate economic renewal, employment opportunities and resource stewardship for First Nation communities in the far North. One of the rationales to opening up this intact forest to commercial harvesting is to address a perceived future shortfall of wood supply in the province.

Pursuant to the NBI's Community-Based Land Use Planning Process, each First Nation community within the NBI area is expected to lead a planning process and develop a land use strategy for its respective region, with support and input from MNR and other provincial agencies.

In June 2006, MNR adopted the first land use strategy using the NBI planning process. The "Community-based Land Use Strategy for the Whitefeather Forest and Adjacent Areas" (the WFAA Strategy) is the first of an expected 15 land use strategies to be developed under NBI. For a detailed review of the WFAA Strategy, see pages 124–128 of this Annual Report.

The WFAA Strategy, developed by Pikangikum First Nation with the assistance of MNR, is a guidance document that sets out specific land use designations – such as Dedicated Protected Areas and General Use Areas – and identifies zoning areas where each of the designations are supported. The WFAA Strategy also provides strategic direction for the proposed future land uses and activities.

The WFAA Strategy brings the province one step closer to opening up Ontario's northern boreal forest to commercial forestry and new levels of resource development, including mining, tourism, hydroelectric generation, and road building. The WFAA Strategy makes important zoning decisions, such as which areas should be protected, and which should support forestry and other development that will likely have significant impacts on the fragile northern boreal forest. Yet, these decisions were made without the benefit or guidance of a comprehensive land use planning system.

There is no legislative direction for the development of the NBI land use strategies. Further, there has not been any broad-scale land use planning or gap analysis for the NBI area to guide the individual land use decisions in the WFAA Strategy. Without such broad planning guidance – like objectives for the conservation of biodiversity – the NBI's piecemeal approach wastes a unique opportunity to create a regional system of protected areas that best safeguards ecological values for all of the NBI area.

This approach is in stark contrast to what is required in other parts of the province. In southern Ontario, the *Planning Act* and the 2005 Provincial Policy Statement provide clear planning guidance. Moreover, extensive planning for Crown lands was undertaken for the Ontario's Living Legacy land use strategy for the AOU.

The WFAA Strategy hopes to achieve the competing objectives of economic renewal and increased employment on the one hand; and sustainability, biological conservation, stewardship of the land, and remoteness objectives, on the other. With the inevitable tension between these goals of conservation and development – a tension which will likely arise in all of the individual NBI land use strategies – there is a strong need for clear and explicit rules governing planning under the NBI before the next 14 land use strategies are developed.

Forestry and Wood Supply

While the government is moving to open up the intact northern boreal forest to logging, some wood supply that already exists for commercial forestry in the AOU is not currently being utilized. Ontario's forest industry is in a state of massive change, caused by a number of economic factors, including a strong Canadian dollar, increasing energy costs, slumping prices for lumber, declining demand for newsprint, cheap foreign competition, and U.S. export barriers. As a result, companies are restructuring and taking drastic measures to remain competitive.

It is expected that this period of restructuring will result in fewer, larger companies operating fewer, but more efficient, mills. A large number of mills have already been closed in the province. The mill closures have caused significant job losses, declining populations in northern towns and significant impacts on the municipal tax base.

The provincial government has been under pressure to assist the forest industry, its workers, and northern communities in surviving this crisis. Since 2005, the province has responded with over $1 billion in new programs for the forest industry over five years, as well as making changes to a number of existing government policies and programs. The initiatives include loans and grants to stimulate investment, electricity and stumpage fee rebates, streamlining and speeding up approval processes, and an Ontario Wood Promotion Program to enhance value-added manufacturing. Some of these initiatives are very positive, particularly those that improve forest inventories and those that encourage value-added manufacturing.

For many years, the government has been advised to help diversify northern economic development by ensuring that more harvested wood is manufactured into products in Ontario. Unlike dimensional lumber, value-added wood products are not subject to U.S. duties and could increase revenues and jobs. However, some of the government's other recent initiatives may be ill-conceived, and result in unintended environmental and social consequences.

The ministry has launched "competitive" processes to re-allocate wood that has been freed up by mill closures. This is an unprecedented situation with significant volumes of Crown timber are likely to be re-allocated in the near future. The ministry's decisions about wood allocation and licensing have high potential to impact the long-term health of Crown forests, as well as the economic and social well-being of northern communities. In 2007, MNR turned down an *EBR* application requesting a review of the ministry's wood allocation policies and procedures. This application is reviewed in detail on pages 221 to 225 in the Supplement to this Annual Report.

The ECO disagrees with MNR's position that wood allocation and licensing decisions are not environmentally significant. The 2004 Provincial Wood Supply Strategy gives considerable weight to industrial demand at the expense of environmental factors. This strategy described an impending shortage of wood for the commercial forest industry. The present situation in the industry offers the potential to avert the wood supply gap. Mill demand is now decreasing due to massive changes in the industry, yet MNR is rushing to create new demand, re-allocating wood instead of reconciling the relationship between allowable harvest in forest management plans and mill capacity.

The closure of mills presents problems, but provides opportunities as well. Once the wood allocations from those mills revert back to the Crown, the ministry has an opportunity to step back and assess the forest, set new sustainable wood supply objectives – independent of historical mill demand – and consider the best use of its natural capital.

The ECO notes that MNR's primary responsibility under both the *CFSA* and the *EBR* is to ensure the sustainability of Ontario's forests. MNR has an opportunity now to re-balance wood supply and demand, to consider increasing non-timber forest products, and to promote ecotourism, recreational hunting and fishing, and the protection of threatened species. The ministry should also consider the interests of the communities on the landscape, especially in light of the severe economic impacts they are experiencing. MNR has the capacity to make major decisions now that could result in a dramatically different future forest.

MNR also must make its policies, procedures and decisions more transparent. Northern communities and other stakeholders have been asking for more transparency in ministry allocation decisions. They feel that the ministry is allowing large forestry companies to buy mills, close them and send the wood supply to their mills in other communities or even out of province. These are legitimate concerns, and illustrate the significant social, economic and environmental impacts of MNR's licensing and allocation decisions. The ECO urges MNR to review its policies regarding wood allocation, and to provide more opportunities for public comment on both the policies and ministry decisions about allocations.

Ministry of Energy and Transmission Lines Through the North

Ontario's existing electricity system is strained by limited generating capacity, while the demand for electricity in the province is expected to keep growing. To add to the pressure, the Ontario government has committed to shutting down all of the province's coal-fired generating plants. Accordingly, the Ministry of Energy – responsible for setting the policy framework for the supply, transmission and delivery of electricity for all of Ontario – is looking for new ways to improve the province's electricity supply.

The ministry is considering new hydroelectric generation sources in both northern Ontario and adjoining provinces as one way to meet Ontario's growing energy demands, while reducing reliance on fossil fuels and simultaneously stimulating economic development in the North.. Currently, the ministry is working with Manitoba to reach a long-term agreement to import electricity from the proposed Conawapa hydroelectricity facility in Northern Manitoba.

This proposed new energy supply initiative would require the construction of a major transmission line – including a substantial new transmission corridor, as well as related infrastructure and supporting road networks – across Ontario's North, to deliver electricity from the generating station in Northern Manitoba to the primary area of electricity demand in southern Ontario. The proposed transmission corridor likely would run directly through thousands of kilometers of intact boreal forest in northern Ontario, fragmenting habitat for many species. To date, no environmental study has been conducted to evaluate the proposed transmission project.

Despite the significant implications that the Ministry of Energy's policies and decisions may have on the northern environment, these decisions generally are made in isolation from other planning and decision-making processes affecting the north.

Reforming Mining Law

In March 2006, the Ministry of Northern Development and Mines (MNDM) finalized its Mineral Development Strategy for Ontario. Its goal is "to reinforce Ontario's international position as a leading mining jurisdiction and foster responsible mineral development for the benefit of all citizens of Ontario." The mineral strategy contains numerous recommended actions in support of its four central objectives:

- Promoting long-term sustainability and global competitiveness;
- Supporting modern, safe and environmentally sound exploration and mining;
- Clarifying and modernizing mineral resource stewardship; and,
- Promoting community development and opportunities for all.

MNDM's strategy revolves entirely around the promotion of mining in Ontario, with little consideration given to the larger responsibilities of the Ontario government, such as land use planning or environmental protection. Part of the ministry's rationale for creating this strategy was that "public perception has lagged behind. ... A negative perception of mining and misconceptions about the industry could foster unwarranted public concerns and make it more difficult for Ontario to attract much-needed investment in new projects and expansions."

MNDM takes the position that mining is the preeminent land use on Crown lands, which has enormous implications on other ministries that, arguably, are forced into secondary roles. The mineral strategy states that "Ontario's Far North (the area north of the current limits for commercial timber harvesting) is poised to become one of the province's newest and most vibrant mining areas." Indeed, the mineral strategy's self-described "balanced" approach directs that "all Crown land-use planning processes ... [should give] additional consideration to areas with the highest mineral potential before finalizing any land-use decisions that could prohibit exploration or mining on these lands."

The mineral strategy provides few details as to how the ministry will safeguard the environment, stating ambiguously that "the province needs clear targets and processes that will facilitate industry's efforts to attain higher standards." This lack of detail is not reassuring in light of the ministry's promotional material targeted at international investment, which states that Ontario has a "streamlined process for obtaining mineral development permits."

The mineral development strategy all but ignores that mining is but one of many possible land uses in northern Ontario. The strategy is silent on the need for planning beyond asserting that MNDM, in conjunction with MNR, is "exploring potential approaches for land-use planning in Ontario's Far North." Mineral development does have an important role to play in Ontario, but the ministry must ensure that the 'sustainability' component of its mandate extends beyond solely economic interests, and that it dovetails with the broader responsibilities of the Ontario government.

In December 2006, the ECO received an *EBR* application requesting regulatory reform related to the assessment of the environmental impacts of proposed mining projects. The applicants asserted that, although mining projects may require approvals for a number of related activities – such as approvals for energy generation, road construction and permits to take water – there is usually no individual environmental assessment conducted for the entire project. The applicants also asserted that it is necessary for the ecological impact of mining projects in their entirety, from staking to reclamation and remediation, be assessed prior to any approvals.

There are a variety of laws, regulations and processes that govern mineral development in Ontario. These measures include the *Mining Act*, various class EAs, and numerous permitting processes under statutes such as the *Ontario Water Resources Act*. However, the central argument of this *EBR* application is that this system is "uncoordinated," and results in a "piecemeal assessment" of potential environmental harm. For further detail on this application, see pages 230 to 236 in the Supplement to this Annual Report.

There are strong arguments that reforms to the *Mining Act* and its associated legal mechanisms are needed. The existing regulatory structure treats public land as freely open to mineral exploration. The consideration of other interests, such as the protection of ecological values, is reactionary, and the question of whether mineral development may be inappropriate is not answered upfront. Instead, it is assumed that mineral development is appropriate almost everywhere and that it is the "best" use of Crown land in almost all circumstances.

Protected Areas and Mining – Lessons Learned?

In 1999, MNR released Ontario's Living Legacy (OLL) Land Use Strategy, which recommended the creation of 378 new protected areas on Crown lands in Ontario. However, it later was revealed by an *EBR* application that there were mining claims staked on 66 of the proposed provincial parks and conservation reserves. The claims had been staked either before the protected areas were proposed, or after they were proposed but before MNR requested that MNDM remove the areas from eligibility.

The mining disentanglement exercise coming out of the OLL process has long been a concern for the ECO. A handful of the sites identified for disentanglement still require resolution and, ideally, to be regulated as protected areas. Problems still remain almost 10 years after sites were recommended for protection and five years after MNR and MNDM said they initiated a process to fix the situation. For example, among the remaining sites with unresolved claims are the proposed Lake Superior Highlands Conservation Reserve and the Lake Superior Archipelago Conservation Reserve. Together, these two sites represent over 95,000 ha of land.

The Ontario government has a duty to ensure that this conflict between the regulation of protected areas and mineral exploration does not occur again in the future. The ECO believes that lands should be withdrawn from staking when MNR identifies them as candidates for protection. Conflicts such as these are mainly attributable to the disjunction between laws, such as the *Public Lands Act* administered by MNR to manage Crown land, and laws such as the *Mining Act* administered by MNDM to facilitate mineral development. This issue is discussed in detail on pages 89–92 in the Supplement to this Annual Report.

Ontario's *Mining Act*, and its presumption of free entry for mineral development, impedes land use planning. Ecological values should not only be identified, but they should also form the foundation of a comprehensive land use planning regime that possesses legal authority. Without legal authority and designation, the identification of ecological values is virtually meaningless. For example, in the early 1980s, the Attawapiskat Karst was identified as an Area of Natural and Scientific Interest, and the Attawapiskat River was identified as a candidate waterway class provincial park by MNR as part of "extensive strategic land use planning to develop land use direction for Crown lands." However, this planning held no legal weight and neither of these areas was withdrawn from staking. As a result, approximately 33 km of the river adjacent to the Victor Diamond Mine was extensively staked and it will no longer be considered as a candidate for protection. Further, despite identifying this river as a candidate for protection, more than two decades have passed without any steps being taken to regulate the rest of the river.

The ECO also believes that the existing regulatory structure for mining does not adequately assess the cumulative impacts of development. It is evident that the various existing approvals processes are highly compartmentalized. The ECO expressed a similar concern in our 2003/2004 Annual Report with regard to mineral development, stating, "Each of the ministries followed their formal approvals processes. However, the system's current checks and balances did not prevent a result with potentially distressing environmental consequences."

This century-old system continues to rely on principles that are no longer reflective of modern planning or resource management. As noted in a 2004 review of Canadian mining law by West Coast Environmental Law, "Once mine exploration has occurred, and there is a desire to build a mine, industry pressure is such that it is virtually impossible to prohibit this development in order to respect other land uses and objectives."

The ECO believes that ecological values that merit protection should be proactively identified by MNR, and that applicable lands should be withdrawn from eligibility for prospecting and staking by MNDM. This approach would give greater certainty to the mining industry, afford better protection for ecological values, and reduce the complexity of the development approvals process.

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Duty to Consult with First Nations

The Ontario government has a clear duty, pursuant to the Canadian *Constitution Act, 1982*, to consult with First Nations where Crown actions may adversely affect Aboriginal title or rights. This duty has been affirmed by the Supreme Court of Canada in numerous decisions over the years. Yet, the *Mining Act* does not impose any requirements on the government to consult with First Nations when taking actions, such as granting mining claims or leases, that may affect Aboriginal interests.

A recent case by the Ontario Superior Court, *Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation*, seriously questions the existing approach to consultation in the context of mining exploration and development in Ontario. In this case, MNDM had granted a number of mining claims and leases to Platinex (a small exploration company) on Crown land located within the traditional territory of the Kitchenuhmaykoosib Inninuwug First Nation (KI). Despite KI's objections, Platinex intended to proceed with exploration in KI's traditional territory. KI established a blockade to prevent Platinex from drilling and ultimately forced Platinex to vacate the site. Platinex commenced a lawsuit against KI.

In July 2006, the court issued a decision in favour of KI, ordering Platinex to halt drilling operations in KI traditional territory, and requiring the parties to go back to the table and engage in a proper consultation process. The Court noted that MNDM has a duty to undertake meaningful and reasonable consultation with First Nations when granting mining claims and leases that may impact their rights, and that such duty cannot be abdicated or delegated to third parties. (In May 2007, after the province and Platinex had engaged in reasonable consultation with KI, the court permitted Platinex to resume some drilling while requiring on-going consultation to occur.)

Because of the supremacy of the *Constitution Act, 1982*, the obligations for consultation and accommodation prevail regardless of whether there are express provisions included in the *Mining Act*. Nonetheless, the Ontario government should amend the *Mining Act* to include specific criteria that reflect MNDM's constitutional duty to consult with First Nations when granting mining claims and leases that may impact their rights. This case also provides strong direction for the government to re-evaluate the existing regulatory structure that treats public land as freely open to mineral exploration.

At a minimum, this case calls for the province to develop and apply appropriate consultation polices or regulations in relation to resource decisions. This would not only ensure that proper consultation occurs, but would also alleviate the uncertainty that developers face in satisfying themselves that the government has fulfilled its constitutional duty to consult with First Nations when granting mining rights.

Duty to Consult with First Nations (continued)

The Ontario government has been working towards developing better Aboriginal consultation policies. Most recently, in February 2007, MNDM released a discussion paper, entitled "Toward Developing an Aboriginal Consultation Approach for Mineral Sector Activities". In this discussion paper, MNDM reaffirms its commitment to meeting its constitutional duty to meaningfully consult with First Nations where its actions may adversely affect Aboriginal or treaty rights, and sets out an approach for engagement with First Nations.

Big Picture Approach to Planning

The Canadian Council of Forest Ministers committed to a bold vision for our country's forests in 1998. They stated, "Our vision of sustainable forest management includes integrated land use and forest management plans for important values at appropriate scales from the whole landscape to the local site, for short- and long-term goals. It will require research, continual learning and adaptation, using ecologically sound and scientifically advanced tools and practices, to realize the concept." This vision also stressed that biodiversity and essential ecological process must be maintained.

The evidence presented in this section of the ECO Annual Report brings into serious question whether this type of vision has been applied to northern Ontario. Northern Ontario has a unique and varied ecology, which the ECO believes necessitates *at least* the same standard of planning that applies to the rest of the province. The status quo is not sustainable.

It is evident that the Ontario government approaches issues in the north in a highly compartmentalized fashion, with potentially severe environmental consequences. A silo mentality is evident not only at the ministry level, but also in individual programs within ministries. This is a failure in governance. The National Round Table on the Environment and the Economy noted in 2005 that this type of unwieldy division of responsibilities in the boreal causes "planning and decision-making processes [to] remain isolated from one another, inhibiting efforts to set landscape-level objectives and manage the cumulative effects of development across all sectors." Indeed the Royal Commission on the Northern Environment came to a similar conclusion in 1985.

Currently, the contributions of many key ministries in planning for the north are most notable by their absence. MOE has cast itself in a very narrow role with respect to the north, despite its mandate to ensure ecological protection and sustainable development across the province. Its presence is mainly manifest in its issuance of certificates of approval. Often, these isolated approvals by the ministry relate to large projects, but fail to address the cumulative impacts on the environment. MOE also appears to have retreated to being merely an administrator of the *Environmental Assessment Act*, rather than trying to ensure that other ministries stringently adhere to the EA process.

Other ministries, such as ENG, appear not to comprehend the impact of their policy choices on northern Ontario. ENG's role may not be as prominent as that of other ministries. However, the few decisions that it makes with respect to northern Ontario have enormous environmental consequences. For example, it is illogical that any approvals process for a hydro transmission line stretching from Manitoba to central Ontario could occur without being considered as part of a larger land use planning exercise.

Without a comprehensive land use planning system in place for the north, the current system of forest management planning ends up being the *de facto* land use planning system. In focusing on forest management, MNR treats the management of all other components of Crown land, such as conserving biodiversity, as a lesser priority. MNR is poised to push this system further northward through its Northern Boreal Initiative. The forest management process is intended to be "sustainable," but it is not intended to comprehensively plan for all values across the landscape. Indeed, some ecological values that are fortunate enough to be considered in a forest management process, like woodland caribou, still face very perilous futures.

Moreover, Ontario's existing regulatory structure for mineral development is the antithesis of a comprehensive land use planning system. The *Mining Act* causes public land to be treated as freely open to mineral exploration. It assumes that mineral development is the preferred form of land use in almost all circumstances. MNDM itself states that "prior consent to stake or prior notification of the owner of the affected land is not required."

Under such a system, the protection of ecological values or the consideration of other interests is relegated to being an afterthought and the cumulative impacts of development are not well addressed. The Ontario government reinforces this approach in choosing to take a "one-window approach" through MNDM on large-scale mineral developments in the north. The consequence of these policy choices is that environmental and land use planning concerns are a low priority, if one at all.

Not only is planning in the north undermined by the silo approach taken by ministries, but it is also being compromised by the geographic piecemeal approach to planning for the north. Under the NBI, planning is to be conducted separately for each of the regions in the NBI area, as determined by each of the lead First Nation communities. Without landscape-level guidance, this approach renders it difficult for the province to meet important land use planning objectives. For example, a landscape-level approach is needed to create protected areas that are sufficiently large to maintain ecological integrity.

The Ontario government can choose a different path. In the past, the government has targeted particular regions of the province in developing progressive and innovative land use planning systems. On a smaller scale, it has done so through laws such as the *Niagara Escarpment Planning and Development Act* and the *Oak Ridges Moraine Conservation Act, 2001*. On a larger scale, it has done so through initiatives such as Ontario's Living Legacy.

In 1997, the Ontario government initiated a process to determine a strategic direction for the management of 45 per cent of the province, encompassing all Crown lands within the AOU. The then-Minister of Natural Resources stated, "We will build consensus on the protection and use of our resources. We are responding to the public's demand for a comprehensive system of managing our valuable natural resources." It became the most extensive land use planning process in the history of the province, with the public submitting more than 40,000 comments. The result was Ontario's Living Legacy in 1999, which essentially provides land use direction for the middle third – approximately 39 million hectares – of the province.

The boreal forest and tundra above the AOU are approximately the same size as the AOU – one-third of the province. However, there are two fundamental differences between these two areas: the northern third of the province is, as of yet, relatively unimpaired by development, and it has not been subject to any comprehensive land use planning process. The need for a new approach for northern Ontario is all the more urgent as the region represents a rare opportunity to find solutions before problems become unmanageable. The same public interest found in Ontario's Living Legacy exists for developing an ecologically sensible planning system for all of the north.

| RECOMMENDATION 5 |

The ECO recommends that MNDM reform the *Mining Act* to reflect land use priorities of Ontarians today, including ecological values.

Precautionary Approach to Land Use Planning

The precautionary principle is a fundamental tenet of modern natural resources and environmental management. As such, it has a direct bearing on any discussion of land use planning in northern Ontario. Ideally, governments apply the precautionary principle as a core component in their decision-making processes.

This concept was arguably born at the United Nations Conference on Environment and Development (the Rio Earth Summit) in 1992. The Government of Canada, along with 178 other countries, adopted Agenda 21 and the Rio Declaration on Environment and Development. This declaration was a milestone of global importance and it called for a re-thinking of current approaches to environmental issues.

The declaration was intended to set a new path for conserving the environment, while planning for development. It recognized that "in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it." It also called for governments to use the precautionary principle. The precautionary principle is also mentioned in the international Convention on Biological Diversity, which states "where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat."

The precautionary principle is based on several axioms: accepting the limitations of human knowledge and the limits of our capacity to manage the planet; in the face of uncertainty, we must think deeply and act thoughtfully; and, we must not make irreversible changes. Unfortunately, concepts such as the precautionary principle are often reduced to rhetoric. Indeed, only two laws in Ontario explicitly make mention of it. It is not a consideration in the current approach – or lack thereof – to land use planning in northern Ontario.

The need for a precautionary approach was the crux of several *EBR* applications dealing with northern Ontario, all of which were denied by the various ministries referenced. In some respects, what is being called for is a change in the course of history: by adopting the precautionary principle we have the opportunity to view the north as a 'clean slate'. It is the opportunity to learn from past mistakes and to cast a new vision in which environmental concerns are the priority, rather than an afterthought.

ANNUAL REPORT 2006–2007

Going Forward: A Clean Slate

Ontario's far North provides a rare opportunity. A clean slate exists for the provincial government to develop a strong, ecologically sound, landscape-level planning approach. A new planning system developed by a thorough planning process, which includes broad consultation from the outset, will not only result in ecological benefits, but will also help to ensure greater public acceptance. It will provide greater predictability for all concerned.

The ECO urges the province to create a comprehensive land use strategy for the north. The underpinnings of this northern comprehensive land use strategy should include a dramatic expansion of the protected areas network. Currently, protected areas only cover 7.7 per cent of the northernmost 400,000 km^2 of Ontario, north of the AOU, and three-quarters of this total area is found in just one provincial park. The creation of new provincial parks and conservation reserves would serve a crucial role in taking a precautionary approach to protecting biodiversity.

The expansion of the protected areas network would be a bold vision to protect the ecological integrity of northern Ontario. It is critically important that protected areas be established that are of a sufficient size to maintain northern species and the ecosystems upon which they depend. Numerous independent scientific studies have concluded that a network of protected areas, including some areas that are at a minimum 9,000 to 13,000 km^2, are necessary in order to have a minimal prospect of maintaining viable populations of wildlife. The current extent of protected areas is insufficient to meet this challenge.

Ontario needs a land use management system to guide important zoning decisions in the north. The importance and range of issues dealt with under such a system necessitates that its administration not be delegated to one ministry alone, but that all relevant branches of government embrace responsibility. This new approach not only requires comprehensive planning and assessments of individual projects, but also must address the cumulative impacts of development. The new land use planning system should also have the force of law.

At present, the only tool available to the province to govern land use planning of Crown land is the *Public Lands Act*. Unfortunately, the *Public Lands Act* provides very little legislative authority or guidance for land use planning. The Act does not reflect modern principles of resource management, nor was it designed to address current environmental realities. Indeed, this law has remained relatively unchanged since it was introduced in 1913. There have been a number of minor revisions over the years with the result that the *Public Lands Act* is a disjointed piece of legislation with no clear overall direction. Simply put, the Act does not reflect MNR's current mandate to conserve biodiversity and to manage natural resources in a sustainable manner.

Under the current legislative regime, there are no requirements for land use plans to be developed, and, if developed, they have no legal authority. Accordingly, the Ontario government's efforts at land use planning in the far North, such as the Northern Boreal Initiative, are seriously hampered by the absence of appropriate planning tools.

The ECO believes that the *Public Lands Act* needs to be reformed so that the Ontario government will be able to properly manage provincial Crown lands. New Crown land management legislation should provide legislative requirements, as well as legal authority for land use plans on Crown land. In addition, the new legislation should identify provincial interests, set out detailed planning requirements, and provide protection for ecological values. Such a planning system should take precedence over laws that govern other disparate land uses, such as those for forestry and mining.

The ECO envisions a new legislative regime that provides ministries with the necessary regulatory tools to make wise land use decisions, guided by public scrutiny and a precautionary approach to environmental protection. A similar recommendation was made in 1998 to the Ontario government by the citizen roundtables during consultation over Ontario's Living Legacy, but it was never fully implemented by the government.

Similarly, the province's regulatory regime governing mineral development is in need of substantive reform. Ontario's century-old mining system treats mineral development as the pre-eminent use of land. It must be reformed to reflect contemporary land use priorities and environmental values.

The Ontario government needs to address the failure of the *Mining Act* and its associated legal mechanisms; the various existing approvals processes are highly compartmentalized and, generally, there is no assessment of the overall impacts of an entire mineral development project, including the cumulative ecological impacts. The ECO believes that the regulatory structure for mining development must be reformed to ensure that all impacts of a mining project, including the cumulative impacts, are adequately assessed prior to any mineral development.

Ontario has a rare opportunity to develop a strong, ecologically sound, landscape-level planning approach. A precautionary approach to decision-making and planning for northern Ontario must be embraced to ensure a sustainable future. This new approach is not only warranted on ecological grounds, but is also necessary to ensure the social well-being and economic security of northern communities.

For ministry comments, see page 211.

| RECOMMENDATION 6 |

The ECO recommends that MNR reform the *Public Lands Act* to create a planning system that provides MNR with the tools to better protect ecological values on all Crown lands.

Conserving Woodland Caribou: The Benchmark for Northern Sustainability

Introduction

Woodland caribou have been described as epitomizing the "hard-to-perceive, slow-motion crisis" that faces many wildlife species. They rely on intact forests, are very intolerant of disturbances caused by modern resource development, and are extremely sensitive to the alteration of ecological processes, such as changes to natural forest fire cycles or increased pressure from other species. As a result, populations of woodland caribou are in decline across the country. The Canadian Council of Forest Ministers has recognized woodland caribou as an indicator of forest sustainability.

Woodland caribou are a sensitive indicator of the ecological effects of development in northern Ontario. The success or failure of conservation efforts for this species also may serve as a benchmark to measure the sustainability of policy choices made by the Ontario government. If the threats to woodland caribou are not addressed systematically and in a concerted manner, this species could soon disappear from Ontario's boreal forests forever.

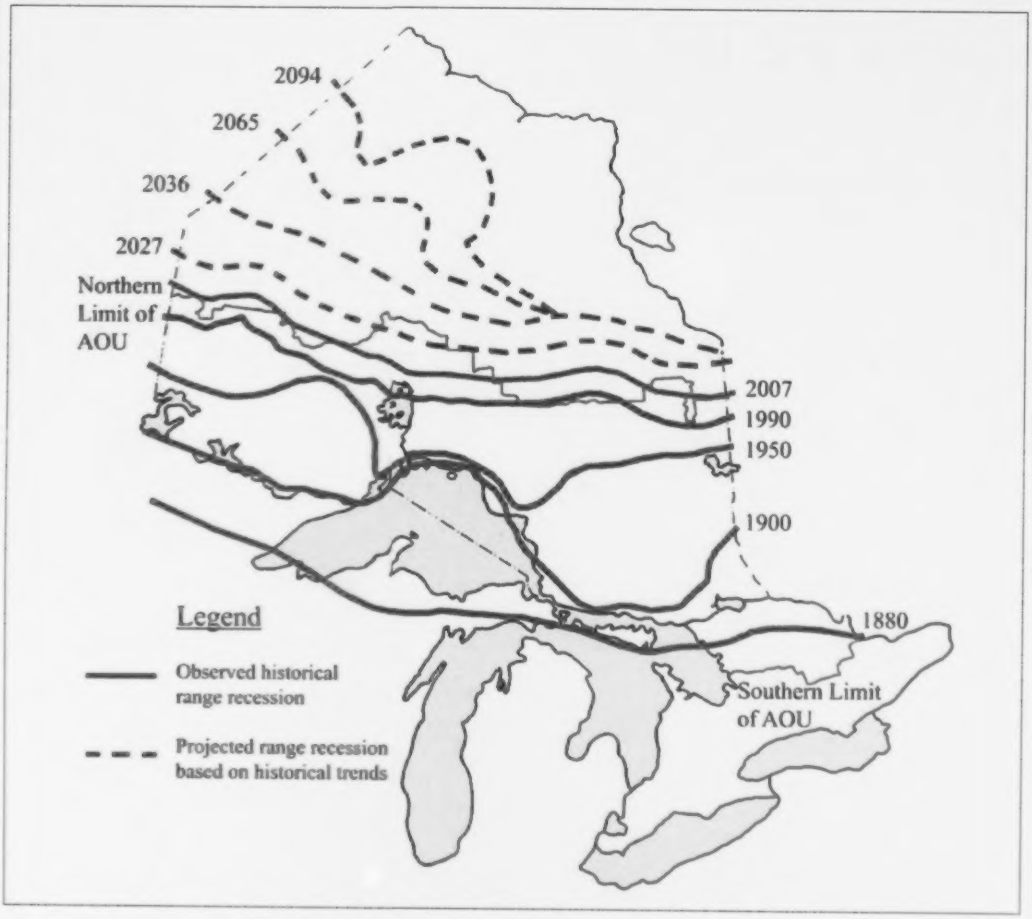
The loss of woodland caribou and their habitat

Currently, woodland caribou are found mainly above of 50°N, north of Hearst and Dryden, with isolated populations scattered along the north shore and some islands of Lake Superior. The northern extent of their range bisects the Hudson Plain at about 53°N latitude. It is estimated that 20,000 woodland caribou remain in Ontario.

The majority of woodland caribou are members of the "forest-tundra" population; this group is not identified as a species at risk. Approximately one-quarter of Ontario's woodland caribou primarily inhabit the boreal forest. This group is described as the sedentary "forest-dwelling" population, and it is considered a species at risk. MNR speculates that about 3,000 forest-dwelling woodland caribou remain in the area set aside for commercial forestry, south of roughly 51°N. However, available estimates of the numbers of woodland caribou in Ontario "are essentially guesses" according to the 2002 population assessment by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC).

As recently as the late 19th century, woodland caribou ranged as far south as central Ontario to approximately 46° N, around North Bay. The species has lost an estimated half of its range in Ontario over the last century. Independent scientific research concludes that woodland caribou have lost an average of almost 35,000 km^2 of range per decade in Ontario over the last century, which is equivalent to a loss of range the size of Algonquin Provincial Park every two years. This loss of range has effectively caused a northward range recession of roughly 34 km per decade. At this rate, and in the absence of substantive action, it is hypothesized that forest-dwelling woodland caribou will be wiped out in Ontario before the end of the 21st century.

| Woodland Caribou Distribution: Historic and Projected |


2094
2065
2036
2027
Northern Limit of AOU
2007
1990
1950
1900
1880
Southern Limit of AOU
Legend
Observed historical range recession
Projected range recession based on historical trends

Projected Range Recession of the Forest-Dwelling Population of Woodland Caribou in Ontario

This map reflects the peer-reviewed findings of Schaefer's analysis of MNR data, historical data, and other sources published in the journal "Conservation Biology". Woodland caribou have lost half their historic range in the last century at a rate of approximately 34,800 km^2 per decade. Assuming this rate continues, Ontario's forest-dwelling caribou population will be extirpated from the province by 2094: the 2094 line on the map reflects the northern limit of the tree line. Schaefer's analysis also revealed the strong correlation between the recent southern limits of the caribou's range occupancy and the northern front of forest harvesting.

Much of the range recession of woodland caribou in Ontario is coincident with landscape-level fragmentation of habitat – and the subsequent isolation of caribou populations – caused by logging, land clearing, and road building. Forestry activities also have been linked to a series of related threats to this species at risk, including changes to forest composition, increased forest fire suppression, and elevated levels of mortality due to significant alterations in predator-prey dynamics.

Government approaches to conservation

While MNR has been modifying forest management practices since the mid-1970s to mitigate the effects of timber harvesting on woodland caribou habitat, early attempts were unsuccessful. In 1994, the ministry began applying its "Forest Management Guidelines for the Conservation of Woodland Caribou" in northwestern Ontario. This regulated guideline prescribes that forestry operations should harvest timber in blocks of 10,000 ha or greater to minimize forest fragmentation, while ensuring comparable sized blocks of undisturbed old-growth forest for woodland caribou habitat.

In our 2001/2002 Annual Report, the ECO reviewed the caribou guidelines and stated that the determination of the "impacts of forestry operations on the boreal population of woodland caribou is dependent on effective monitoring." The ECO encouraged MNR to conduct a rigorous scientific monitoring program and to consider woodland caribou habitat and range occupancy in the creation of new protected areas.

MNR is required to maintain a program of scientific studies to assess the effectiveness of forest management guides. In 2004, the ministry released its "Provincial Wildlife Population Monitoring Program." This monitoring plan reduced the number of species to be monitored, relative to the previous plan, from 92 to 43. Among the few mammals that MNR chose to monitor were chipmunks, mice and voles. Alarmingly, woodland caribou were not one of the species that were chosen to be monitored by MNR, despite the fact that they are among the few species that have dedicated guidelines for their management.

More than five years in the making, MNR released a draft "Recovery Strategy for Forest-Dwelling Woodland Caribou (*Rangifer tarandus caribou*) in Ontario" in 2006. The recovery strategy relies on the forestry guidelines "to protect caribou habitat." Given the importance of these guidelines, the ECO conducted a review of independent forest audits, which revealed a clear and progressive pattern of woodland caribou habitat loss due to current forestry policy. Excerpts from a dozen of these independent forest audits are presented on pages 102 to 104 in the Supplement to this Annual Report.

The apparent conflict between regulated forestry guidelines – one for moose, the other for woodland caribou – makes a difficult situation even worse. The ministry's guidelines for moose result in altered landscape patterns, causing increased wolf densities and unsustainably high mortality risks for woodland caribou. Even if the moose guidelines are not applied in occupied caribou range, their application elsewhere encourages a northward range expansion of moose that pressures woodland caribou. Additionally, MNR does not consider the impacts on other species when managing moose populations through regulated hunting. The ECO has detailed this concern on pages 105–106 in the Supplement to this Annual Report. The ECO believes that MNR should aim to achieve pre-colonization population levels of moose when setting hunting quotas within occupied woodland caribou range, as well as areas where re-colonization of woodland caribou is feasible.

MNR's focus on the maintenance of wood supply, together with its approach to fire suppression, could also have serious long-term consequences for woodland caribou. The ECO reviewed Ontario's Forest Fire Management Strategy in our 2004/2005 Annual Report and concluded that "the forest-dwelling boreal population of woodland caribou depends upon fire as an ecological process to renew their habitat. It is not known how this policy choice – to replace naturally occurring fires with forest harvesting – will affect this species at risk." That report also noted that the fire strategy contained "serious inconsistencies … based on giving priority to short-term wood supply over the ecological role of fire in some areas."

The policy choices of ministries other than MNR unquestionably have an impact of woodland caribou. In 2006, an *EBR* application was submitted on the sufficiency of the measures that MNR, MNDM, MOE, and ENG have in place to conserve woodland caribou. The applicants were concerned that "while the government continues to delay actual (on the ground) implementation of a caribou recovery strategy, status quo industrial development continues … in critical caribou habitat." They expressed concern that the existing guidance is only applicable to forestry operations on Crown land. The applicants also were concerned about the impacts of other forms of development, including mineral exploration and development, road building and hydroelectric development.

MOE, MNDM and ENG turned down this *EBR* application. MNR chose to conduct a self-described "scoped review" that was restricted to its own monitoring provisions. MNR heavily relied on its yet-to-be released "Caribou Conservation Framework" to allay any possible concerns about the vulnerability of the species and its habitat. In essence, the MNR response could be construed as an admission that the current measures to conserve woodland caribou may not be sufficient, but that the public should have faith that the ministry is reviewing the issue. The main rationale for not conducting a full review was that there already were a suite of mechanisms in place to conserve woodland caribou; however, this position ignores the central point of the applicants' request to review the actual *effectiveness* of these existing measures. This application is discussed in detail on pages 204–211 in the Supplement to this report.

Climate change is likely to be one of the most critical threats to many species at risk in Ontario. It is alarming that the MNR's draft recovery strategy for woodland caribou gives minimal treatment to this threat. The recovery strategy states that "climate change leading to changes in precipitation, decreased fire return intervals, or increased severity of fires could affect caribou by changing vegetation communities." The strategy does acknowledge that the present pattern of climate change may continue to favour the expansion of white-tailed deer range. This is of particular concern as populations of these two ungulates rarely overlap, due to a parasite that is naturally hosted by deer and that is often fatal to woodland caribou.

MNR's recovery strategy makes no mention of the need for new protected areas in northern Ontario. Protected areas cover only 7.7 per cent of the northern boreal, beyond the current limits of commercial forestry. Numerous independent scientific studies have concluded that a network of protected areas, including some areas that are *at a minimum* 9,000 to 13,000 km^2 in size, are necessary to have a minimal prospect of maintaining viable populations of northern species such as woodland caribou.

Next Steps: Legal Protection of Habitat

In May 2007, the *Endangered Species Act, 2007* passed Third Reading in the Ontario Legislature and was given Royal Assent. This new law will come into force by June 30, 2008. Threatened species, such as the forest-dwelling population of woodland caribou, will be specifically afforded legal protections by the Ontario government for the first time. The *Endangered Species Act, 2007* is discussed in more detail on page 96 of this Annual Report.

This new law will prohibit the damage or destruction of the habitat of threatened or endangered species, unless allowed by special provisions that allow for exceptions. The habitat of each of these species is to be prescribed by regulation within five years of the Act coming into force. The *Endangered Species Act, 2007* defines habitat as "an area on which the species depends, directly or indirectly, to carry on its life processes, including life processes such as reproduction, rearing, hibernation, migration or feeding."

In May 2007, the Minister of Natural Resources committed to regulating the habitat of the forest-dwelling population of woodland caribou by June 2009. The scope of genuine protection prescribed for their habitat will be a measure of the effectiveness of the new law, as well as a benchmark to assess the environmental sustainability of policy choices by the Ontario government for northern Ontario.

ECO comment

The ECO is gravely concerned about the long-term survival of Ontario's woodland caribou. MNR's recovery strategy is best described as an endorsement of the status quo, while imposing a further delay in taking tangible action. The strategy describes some pressures, but fails to genuinely tackle threats to the species. It also fails to identify and effectively protect critical habitat. Simply put, it does not meet the basic needs of this species at risk to maximize its chance of survival.

The ministry takes a 'hold the line' approach, deeming it successful if the numbers of woodland caribou do not drop. It is preposterous that the primary measure to "protect" this species at risk is a set of forestry guidelines on how to progressively log its habitat. The point of any recovery effort should be to actually *recover* the population in question, boosting its numbers to the point where it is no longer considered a species at risk. The ECO believes that the current approach sets unambitious, and arguably defeatist, objectives that create a best-case scenario for forest-dwelling woodland caribou to remain a "threatened species."

MNR states that conserving this threatened species "will be an extremely difficult, expensive and long-term initiative, at a spatial and temporal scale not previously required." This assessment is accurate. However, the ECO believes that the lack of effective measures to conserve woodland caribou appears to be influenced more by such economics, despite MNR's assertion that recovery strategies are purely "science-based."

The *Crown Forest Sustainability Act* commits the Ontario government to sustainable forestry. This law states that "large, healthy, diverse and productive Crown forests and their associated ecological processes and biological diversity should be conserved." That is the vision and the ideal. Perhaps, the recovery of woodland caribou in the industrial forest is the ultimate test of that vision. In the end, we may fail in the task, but we should not fail because we did not commit the research and resources necessary to make a sincere and competent effort.

Woodland caribou epitomize why significant changes should be made to the way the Ontario government regulates and plans for northern Ontario, particularly for the intact boreal forest. While MNR is the lead ministry for managing wildlife, the policies of other ministries have a direct, and often negative, impact on conservation measures. A coordinated system of planning, backed by the force of law, is needed to ensure the protection of ecological values, such as woodland caribou.

Ministries often state that they are required to achieve a balance of ecological, social and economic objectives. The ECO believes that a threatened species such as the woodland caribou – that is at high risk of being forever lost from the province without concerted action – should be treated as a provincial interest and its protection should be a clear priority across all of government.

For ministry comments, see page 214.

Ontario's Electricity System: The Ministry of Energy Proposes a Massive Overhaul

The Integrated Power System Plan

Starting in 2004, Ontario's electricity generating and distribution system was the subject of an intensive review by the Ontario government, which involved the public, energy experts and others. The outcome of this review was a 20-year plan for a massive overhaul of the system, announced by the Ministry of Energy (ENG) in June 2006. The Integrated Power System Plan (IPSP or the "Plan"), which will guide the overhaul, is undoubtedly the most significant electricity system initiative in Ontario in over a decade. When (and if) fully implemented, it could result in the construction, refurbishment and replacement of many electricity generating and transmission facilities in Ontario. The capital investment required to implement the generation and conservation components of the Plan is estimated at $70 billion, according to the Ontario Power Authority (the OPA). The OPA was established in 2005 by the *Electricity Restructuring Act* (see 2004/2005 ECO Annual Report, page 133), and is charged with formulating and executing the Plan. One of the OPA's key roles is to ensure an adequate, reliable and secure electricity supply for Ontario.

Gas & Cogeneration	9,400 MW
Gasification	250 MW
Renewables	15,700 MW
Conservation	6,300 MW
Nuclear	14,000 MW
Total	**45,650 MW**

ENG's proposed supply mix for the year 2025: once implemented, the Plan would lead to the closure of Ontario's coal-fired stations and increase reliance on the options listed above.

The OPA was directed in May 2005 by ENG to formulate advice on the supply mix for Ontario's electricity generating system. It did so, and in December 2005 submitted to the Minister of Energy a "Supply Mix Advice Report" for the ministry's consideration. The report contained advice about re-building Ontario's electricity system to ensure the province has sufficient generating capacity for the next two decades, and included specific targets for the years 2015, 2020 and 2025. ENG considered the report in the first six months of 2006 and received a large number of comments from the public on the OPA's advice. Then, on June 13, 2006, ENG announced the province's preferred approach to meeting Ontario's electricity needs and unveiled it to the public. ENG's supply mix decision (see table) was quite similar to the OPA's December 2005 supply mix advice. In turn, ENG gave further support to the approach in June 2006 when it issued its directive to the OPA to prepare the IPSP. Key elements of ENG's supply mix directive to the OPA included goals and objectives for:

- replacing and rebuilding nuclear generation, while placing a limit on overall capacity;
- using natural gas generation at peak times and for high efficiency applications;
- fixing a date for the phase-out of coal-fired generation;
- strengthening the transmission system; and,
- increasing the generating capacity of renewable forms of energy.

In June 2006, ENG also announced that it was directing Ontario Power Generation (OPG) to begin the process for seeking approvals for new nuclear units at an existing facility, and to study the refurbishment of its existing nuclear facilities.

Implications of the IPSP Decision

The environmental implications of the IPSP are complex and could be very significant, especially over the long term. These implications need to be viewed in the context of related Ontario government policy announcements, such as the announcement to keep some of Ontario's coal-fired generating stations open until approximately 2014. In August 2007 the OPA presented the IPSP to the Ontario Energy

Board (OEB) for review, and to seek approval for the Plan. This review process could require approximately 18 months. Until this step is completed, little of the IPSP will be implemented.

However, when the Plan is approved by the OEB (presuming that it will be), and implemented by many different parties, it will have major economic and environmental implications. Because the Plan would commit the province to major new electricity infrastructure projects, consumers of electricity will be financially obligated to support the projects through rates charged for electricity.

The IPSP's environmental implications will be wide-ranging. On the one hand, the efforts to obtain more electricity from small-scale renewable energy sources and to increase conservation efforts are likely to be relatively benign in environmental terms. Some forms of renewable generation, such as wind and solar, tend to have a very small ecological footprint and operate with virtually no emissions of contaminants. On the other hand, the prospect of a major investment in new and refurbished nuclear reactors has revived concerns about the handling and long-term storage of radioactive waste. The financial commitment to building new, and refurbishing existing, nuclear reactors is likely to constrain public and private investment in more benign options, such as conservation and renewable energy. Also, ENG's June 2006 directive to the OPA lacked a timeline for the closure of Ontario's coal-fired generating stations, which was considered a major flaw by many observers.

The Public's View of the Plan

The consultation process for OPA's supply mix proposal was the subject of a great deal of controversy. The ministry posted the proposal for 76 days in late 2005. Initially the proposal was posted for only 45 days, but at the request of the ECO, ENG decided to extend the comment period; many members of the public also pointed out that the comment period was coincident with the December holiday season. Then, in late February 2006, ENG announced that it would hold public meetings across the province so the public could obtain more information about the proposal and submit comments in person.

The principal debate about the Plan, based on a review of the comments submitted on the IPSP, was whether Ontario should choose a "hard" or "soft" energy path. The "hard" path relies on large centralized facilities using traditional generating technologies, such as fossil fuel and nuclear. In contrast, the "soft" path focuses on smaller, more benign forms of generation, like wind, solar and small hydro, as well as conservation and greater reliance on distributed generation. The supporters of the hard path felt that the IPSP's nuclear component was sensible, and some suggested that the coal stations stay open with the addition of emission control technology.

Supporters of the soft path unanimously disliked the nuclear and fossil options and, instead, requested that investment be made in the development of renewable technologies, such as solar and high efficiency co-generation applications, and in conservation programs. Supporters of nuclear and fossil fuel generation were often skeptical that wind generation and other renewables could be reliable, while supporters of renewable energy often claimed that nuclear was costly and frequently unreliable. Many of the commenters were passionate in their support for their preferred energy path.

Of the 2,016 comments ENG received, more than 90 per cent of commenters expressed concern or disappointment with the OPA's supply mix advice, primarily because of its nuclear component. Finally, it should be noted that the public was allowed to comment, through the Environmental Registry, only on the OPA's supply mix advice to ENG, but not on the substance of the June 2006 directive from ENG to the OPA about how Ontario's electricity system should be configured.

Regulatory Amendments and Environmental Review of the Plan

The ECO and many members of the public expressed concern with the way in which the environmental impacts of the IPSP would be reviewed. The day before ENG announced its supply mix decision, important regulatory amendments were made. O. Reg. 424/04 (Integrated Power System Plan) under the *Electricity Act, 1998* sets out the rules by which the Ontario Power Authority would develop the IPSP. The Cabinet of the Ontario government amended this regulation when it promulgated O. Reg. 277/06 on June 12, 2006. The amended O. Reg. 424/04 confirmed that the Plan will not undergo an individual environmental assessment under Ontario's *Environmental Assessment Act (EAA)*.

On June 12, 2006, Cabinet made a second regulation, O. Reg. 276/06 under the *EAA* (Designation and Exemption of Integrated Power System Plan), which had the effect of exempting the overall Plan from the *EAA*. The Minister of the Environment reasoned that the direction provided to the OPA was broad government policy – not a specific project or projects – and, therefore, not subject to the *EAA*. Furthermore, O. Reg. 276/06 has the effect of exempting future iterations of the IPSP from the *EAA*. This regulation became the subject of a great deal of controversy when ENG announced its IPSP directive (see also Public Participation & *EBR* Process in "Review of Posted Notice: *Environmental Assessment Act* (EAA) Designation and Exemption of Integrated Power System Plan (IPSP)" in the Supplement to this Annual Report).

The combined effect of these two regulatory amendments is that the overall Plan will not undergo an individual environmental assessment under the *EAA*. Instead, most projects under the Plan will undergo a proponent-driven environmental screening under O. Reg. 116/01, (Electricity Projects).

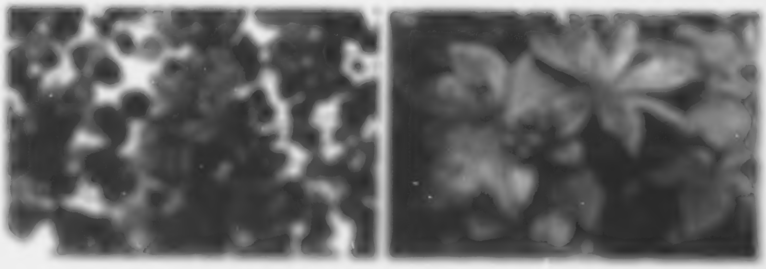
On June 13, 2006, the Ministry of the Environment (MOE) posted an information notice for O. Reg. 276/06 on the Environmental Registry. Six days later, the ECO wrote to MOE and criticized the ministry for its approach (i.e., the use of an information notice instead of a proper proposal notice), which had the effect of denying the public its right to comment on the environmentally significant decision that MOE had just made regarding the IPSP. In turn, MOE invited the public to comment on its information notice, but did not amend the regulation in response to the hundreds of comments received.

EBR Application Filed Days After Regulation Made

An environmental organization filed an application for review of O. Reg. 276/06 within days of the notice being posted on the Environmental Registry. The applicants requested this review because, they argued, the regulation:

- was not subject to public notice and comment requirements and, therefore, was made in contravention of Part II, Public Participation in Government Decision-Making, of the *EBR*;
- does not represent sound environmental planning and is contrary to the public interest;
- is deficient, because it fails to impose any terms and conditions upon the proponent to ensure that the IPSP is developed with meaningful public input; and,
- fails to ensure that the potential environment impacts of the IPSP are adequately identified, analysed, and mitigated.

The applicants also pointed out that there had been ample time and opportunity between December 2005 and June 2006 to clarify the relationship between the IPSP and the *EAA* (i.e., how the Plan would be subject to the *EAA*). Since the government waited until June 2006, the applicants felt that MOE's approach appeared "sudden, rash and concocted." MOE denied this application for review, citing that it considered



the regulation to be "administrative in nature," and that the public interest would not be served by reviewing it (for more detail on MOE's reasons, see the Application Review section of the Supplement to this Annual Report).

ECO Comment

The ECO recognizes that many parts of Ontario's electricity generating and distribution system require refurbishing, re-building or even new additions. However, the ECO has some concerns about the balance between the use of new and refurbished supply, and the use of conservation, demand management and other methods to meet electricity demand.

The OPA used a 0.9 per cent annual rate of growth in electricity demand for forecasting future needs. Predicting such a future growth rate is both critical and controversial. Commenters pointed out that the 0.9 per cent rate was higher than the recent historical average (about 0.5 per cent annually on average over 1990–2005). If the actual growth rate in the years ahead is closer to the lower figure, then the supply requirements being planned could result in generating capacity in excess of future demand.

Forecasting future electricity supply and demand is complex. But, the IPSP is flexible and subject to periodic review. This feature may help to alleviate any issues with variation in demand growth or issues with supply before long-term irreversible decisions are made. Furthermore, the ECO hopes that periodic review may offer opportunities to explore a greater role for conservation, demand-side management, fuel switching, and improved energy efficiency – methods which may avert the need for new supply.

The ECO concurs with many of the stakeholders who expressed disappointment over the nature of the consultations by ENG and MOE, and how the decision to issue the June 2006 directive was made. ENG's directive to the OPA will require the Ontario government to make some of the most substantial capital investments in the province's history. As well, the Plan will put into action many projects which will have environmental implications for generations to come. On several occasions, the ECO has emphasized the importance of ministries carrying out effective public consultation on energy-related targets and initiatives. The ECO reiterates this point, while acknowledging that ENG and the OPA did carry out consultations about what should be Ontario's future supply mix. However, the ECO believes that such a major, capital-intensive electricity plan also deserves thorough scrutiny by environmental experts. Instead, the Plan will be reviewed by the Ontario Energy Board, which traditionally has focused its reviews on issues like rates, costs and fairness, but not long-term social, economic or environmental impacts. This decision will have profound effects on the nature of Ontario's electricity system and corresponding environmental impacts for decades into the future.

For ministry comments, see page 214.

Updates

Managing the Recreational Fishery

The management of the recreational fishery in Ontario is undergoing change on a major scale. The Ministry of Natural Resources (MNR) has been revamping its sport fish policies and regulations over the last two years with the aim of achieving two inter-related goals. The first goal involves a shift to a broader landscape level of management, moving away from an approach that imposed special rules on a number of individual lakes and rivers. MNR says that this shift is science-based and that "a landscape approach also provides a more effective means to determine the state of the resource and monitor the effectiveness of management actions." In addition, management on this scale reduces costs, and helps bring about the second goal: the streamlining of the regulatory framework around recreational fisheries, making it easier for anglers to interpret and follow the rules. Currently, MNR's summary of the recreational fishing regulations is nearly 100 pages in length, and much of the complexity comes from explaining historically-developed rules around fishing in specific lakes and rivers.

A large number of policy and regulatory amendments have been introduced to bring about these changes. As a foundation for its new management approach, MNR developed the Ecological Framework for Recreational Fisheries Management. The framework contains four major components:

- new fisheries management zones (FMZs),
- species tool kits,
- enhanced stewardship, and
- state-of-the-resource reporting.

MNR posted a Proposal Notice outlining details of its new FMZs on the Registry (#RB05E6005) for a 45-day comment period on February 18, 2005, and a decision was posted on August 23, 2005. MNR's decision reduces the number of FMZs (formerly called fishing divisions) from 37 to 20. MNR states that "the boundaries of the new proposed Fisheries Management Zones are based on ecological and social factors such as the province's climate zones, watersheds, fishing pressure, and road networks, and to make the boundaries easier to define on the ground."

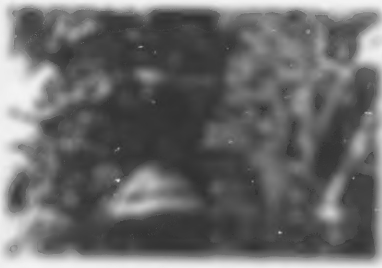
Because the new FMZ boundaries span former fishing districts, an initial consolidation of regulations was required, and MNR sought approval from the federal government for the necessary revisions to the Ontario Fishery Regulations under the federal *Fisheries Act*. MNR posted an Information Notice on the Registry, entitled "Proposed 2007 Recreational Fishing Regulations for the new Fisheries Management

Zones for Ontario" (#XB06E6001), on March 29, 2006. By following the electronic links posted with the notice, Registry users can find proposed changes to FMZs, open seasons, and catch and possession limits for different species. MNR originally intended that the new regulations would take effect on January 1, 2007, but due to delays in the approval process, the launch date has been deferred until January 1, 2008. While some small changes to the sport fishing regulations were introduced at the beginning of 2007, for the most part, anglers are instructed to follow the 2005–2006 Recreational Fishing Regulations Summary. However, MNR did not post any notice on the Registry to advise of these changes.

A host of changes, too extensive to describe here, are slated to take effect at the beginning of 2008. As an example, in southeastern Ontario (FMZ 18) the combining of four previous fishing divisions into one has required MNR to reduce catch limits on walleye to match the provincial limit, to impose a winter closure on some lake trout lakes in the northwestern portion of the zone, and to remove the minimum size limit regulations for walleye and bass in former Division 10. Some parts of the zone will have longer lake trout seasons, some shorter. Four fish sanctuaries that were closed all year will now be open.

Under the new framework, MNR has stated that it will target more public involvement through an enhanced stewardship approach. MNR staff have met with local Stewardship Councils and other stakeholders, and are working toward setting up Fisheries Advisory Councils in all twenty of the FMZs. Early indications are that involvement by the existing Stewardship Committees in recreational fisheries will cease and, instead, jurisdiction will fall under the mandates of the new Fisheries Advisory Councils.

As part of the new Ecological Framework, MNR has consolidated much of its fisheries management science, compiled over the years, into a number of species tool kits. To date, these tool kits have been compiled for the management of twelve sport fish species, and most of these have been posted for public comment on the Registry. MNR intends these tool kits to be used by fisheries managers and Fisheries Advisory Councils in the development of new regulations.



ECO Comment

In some of the areas that ECO examined, the proposed regulatory amendments for recreational fisheries management appear precautionary (e.g., by adopting lower catch limits on walleye in Zone 18). However, the proposed opening of numerous fish sanctuaries without documented analysis seems quite the opposite. In addition, MNR has recommended the removal of hundreds of special exception regulations, and the implications of these changes are unknown. ECO urges MNR to carry out public consultation on such changes and to fully assess the impact of such changes.

Many of the members of the public and organizations who commented on the Ecological Framework for Recreational Fisheries Management expressed strong concern about the landscape scale management approach. Some expressed alarm that carefully developed management strategies for individual water bodies, many of which had been worked on by local Stewardship Councils and stakeholders, would be abandoned under the new landscape scale framework. ECO believes that it is inappropriate to proceed with such sweeping changes without clearly determining the consequences, and before providing meaningful opportunities for public comment.

As for simplifying the complex fishing rules, one member of the public said it best: "While the concept of simplifying and clarifying regulations is admirable, the purpose of the regulations is not to ease communications, it is to protect and manage the resource. First ensure that the regulations serve that purpose, then explain them as clearly as possible, then enforce them rigorously."

In April 2007, the ECO issued a special report "Doing Less with Less" that showed years of cuts to MNR's operating budgets have left the ministry unable to deliver its mandate effectively. In adopting the new FMZs and landscape level approach, MNR states that "the cost of monitoring and enforcing 'unique' solutions on individual lakes has become prohibitive." ECO believes this is a perilous way to achieve operating economy.

In "Doing Less with Less," ECO pointed out that "depending on the situation, the ministries have downloaded programs to local levels of government, off-loaded activities to the private sector, or partnered with volunteer groups." Within the new framework, MNR is once again developing partnerships with local stakeholder groups in the form of Fisheries Advisory Councils. ECO views this as a good approach, but we note that some of the work done by Fisheries Advisory Councils will overlap with what has previously been done by existing local Stewardship Councils. These local Stewardship Councils have done excellent work carefully managing the fishing resource and it appears that their involvement will cease under the new framework.

ECO will monitor the implementation of the new framework for fisheries management and the new regulations as they begin to take effect in 2008.

For ministry comments, see page 215.

Ontario Gives a Big Boost to Glass Recycling

A significant change in how Ontarians ecycle the non-refillable bottles, beer cans and tetra-paks sold by the Liquor Control Board of Ontario (LCBO) was implemented in early 2007.

For decades, controversy has swirled arond the issue of recycling the non-refillable bottles and beer cans generated by consumers of LCBO produts. In the early 1970s, some Ontario environmental groups began to advocate establishment of a fully reflable container, deposit/return system for distributing soft drinks, liquor and other beverages in an attemt to reduce litter, conserve energy, protect the environment and promote local bottling. Ontario's beer idustry has operated a similar system since the 1920s.

In 1985, the Ontario government decide to pursue another approach that placed less emphasis on re-use and more on recycling; it began to promte municipal Blue Box programs and provided millions of dollars of financial support for these programsetween 1986 and 1996. Glass bottles and beer cans generated by consumers of LCBO products were iontified as key materials for the fledgling program. In 1994, the Ontario government passed O. Reg. 101/94, Recycling and Composting of Municipal Waste, and made Blue Box programs mandatory in most prts of Ontario.

In our 1996 annual report, the ECO reprted that the annual municipal cost of landfilling and recycling LCBO containers was in the range of $1 million, and noted that municipal taxpayers were footing this bill while the LCBO continued to report rge profits. The ECO recommended that the Ontario government study the possible use of refillable polyehylene terephthalate (PET) containers for soft drinks and LCBO containers.

In 1997, Ontario municipalities began topass resolutions calling for deposits on LCBO containers. In November 1997, the City of Toronto fil an application for review under the *EBR* requesting deposits on LCBO containers and other changes t MOE policies to promote product stewardship. The application was rejected, but MOE did agree that t LCBO would provide at least $4 million each year to support municipal Blue Box programs. In our 198 annual report, the ECO noted that seven other provinces have container return systems for wine and sp containers, with deposit rates ranging from 5 to 40 cents (depending on container size), and we commended that the Ontario government implement new policies and laws to promote product stewarship, including deposit-refund systems for beverage containers.

In 2005, consistent with recommendations contained in an internal LCBO report, the LCBO began to promote greater use of PET and tetra-pa containers for a range of LCBO products, and encouraged its suppliers to shift to these lightweight pages. By the spring of 2006, a variety of stakeholders had contacted the ECO and began to raise concerns about the implications of these new packaging options.

In September 2006, the Commissioner was asked to make a presentation to a standing committee of the Ontario Legislature that was reviewing the work of the LCBO. He advised the standing committee that one-third of glass bottles and half of all plastic containers and aluminum cans sold at the LCBO were not recycled properly and were being sent to landfills. Moreover, he pointed out that the future recycling rate for LCBO tetra-paks would likely range between 13 and 25 per cent. The Commissioner also noted that many clear and tinted bottles shatter during the collection process and workers cannot colour-separate the shards. Accordingly, only one-fifth of LCBO bottles collected in Blue Box programs are recycled into new bottles. Indeed, much of the LCBO glass recycled in the past decade has been put to low-end uses, such as road aggregate. The Commissioner went on to suggest that a deposit-refund system would provide a more effective mechanism for recycling LCBO containers, allow better quality control for glass collection, and permit the possible future re-use of some of the glass bottles.

Later that month, the Premier announced that Ontario would implement a deposit system for LCBO containers in February 2007. Under the system, Ontario consumers have begun to pay a refundable deposit when they purchase wine and spirits containers larger than 100 ml in glass and PET bottles, tetra-paks, bag-in-a-box containers, and aluminum and steel cans. The empty beer, wine and spirit containers are returned to The Beer Store, a system of 800 stores operated by the Brewers of Ontario, for a full refund. A deposit is not charged on wine made at do-it-yourself facilities.

The MOE states that the new LCBO deposit program is anticipated to help divert about 25,000 to 30,000 additional tonnes of glass from landfill, equivalent to about 80 million bottles. Another aim of the new program is to recycle some of the glass containers into high value products, such as new glass bottles or fibreglass insulation. The new container return program will also free up space in Blue Boxes, giving municipal governments the opportunity to expand recycling programs. Under the *Waste Diversion Act*, the LCBO was designated as a "steward" when the Blue Box Program Plan was approved in late 2003, with accompanying funding responsibilities.

While the Ontario government expects that the new LCBO system will gradually reduce the quantities of materials collected by municipal Blue Box programs, it also anticipates that there will be a period of transition for consumers, and many LCBO containers will still be handled by municipal Blue Box programs. To address these costs, the LCBO will continue to provide $5 million per year over the next two years (2007-08) to Waste Diversion Ontario (WDO) for distribution to municipalities to offset their costs. After this initial period, the WDO will conduct audits to determine how many residual beverage alcohol containers are making their way into Blue Box programs, and the Ontario government will consult on the most appropriate means to address this issue.

Although this initiative arguably could have been subject to public consultation on the Registry, MOE advised the ECO in the fall of 2006 that the decision was made by Cabinet, not a ministry. With respect to consultation on the implementation of the decision, the MOE further advised the ECO that the lead ministry on the program is the Ministry of Public Infrastructure Renewal (MPIR) and "that it is not usual government practice to solicit public input on contract negotiations." MOE went on to note that the Ontario government recognized it "is important that the public understand the contract and associated program" and the contract was published on the MPIR web site in November 2006. For these reasons, the decisions related to implementing this new program were not posted as a regular Registry proposal; instead, MOE elected to post an information notice (XA06E0011) in December 2006.

The ECO commends the Ontario government for its bold decision to launch a deposit-refund system for LCBO containers. We intend to monitor its implementation and report on its progress in future annual reports.

For ministry comments, see page 215.

Missed Opportunity on Environmental Assessment Reforms?

The Pressure for Reforms

Most public sector infrastructure projects and other undertakings in Ontario are subject to some level of environmental scrutiny under the *Environmental Assessment Act* (EAA), the vast majority through a streamlined approval process utilizing Class Environmental Assessments (Class EAs). Certain private sector projects, particularly waste management and energy projects, are also subject to the EAA.

Virtually since its enactment in 1975, the EAA has been a source of tension and debate. On the one hand, proponents have complained that complex, prolonged and expensive approval processes delay needed infrastructure proposals for roads, energy servicing, waste management, water treatment and sewers. On the other hand, environmental advocates and citizen groups have felt thwarted by inadequate consultation and transparency. The latter have also been frustrated that the process leads inexorably towards approval, while the need for most projects is virtually never open to question. This essential tension persists, despite periodic reforms of the process. One expert observer noted in 2001 that Ontario's EA process has fallen behind other jurisdictions, and has deteriorated "from a progressive, open and environmentally enlightened planning and decision-making process to a narrow approach, one that focuses solely on identifying and mitigating the adverse biophysical effects of individual projects."

MOE is once again working to reform Ontario's EA process, after receiving input from its expert Advisory Panel on Improvements to Ontario's EA Process, which submitted the final recommendations of its executive group in March 2005. In June 2006, the ministry announced an action plan for EA improvements, promising "a more effective and efficient EA process" that would "mean a faster yes or a faster no for applicants while completely protecting the environment." The ministry says that its action plan will:

- "streamline the approvals process for transit projects;
- develop a new waste regulation that standardizes the process, based on type, size and impact of project;
- integrate the EA process with planning processes under other provincial legislation to reduce duplication, especially for energy, transit and waste initiatives;
- ensure projects receive a level of review appropriate to their potential environmental impact; and
- improve education and guidance to eliminate confusion and false starts."

MOE reform plans for the EA process are extensive; it is likely that the ministry is going to take a number of years to formulate and implement all of them. Among other things, the ministry wants to update the Class EA process, develop training and education programs for EA practitioners, improve the EA website, and ensure that proponents adhere to EA conditions. Several parent Class EA documents are also under review, and a number of administrative amendments such as delegation of decision-making authority are underway.

With regard to improving its EA website, MOE has advised that in the future it will provide on-line access to more documents, such as ministry reviews, and Notices of Commencement and Completion. Proponents will also be advised to develop their own dedicated project websites, providing access to EA documents. The ECO hopes this will help address the many difficulties faced by the public in trying to access relevant environmental assessment approval documents – a frequent complaint heard by our office.

[illegible]

So far, MOE has consulted on and finalized two packages of regulatory amendments affecting waste management projects. Because these amendments are complex and were finalized on March 23, 2007, just days before the end of ECO's annual review cycle, the ECO plans to review them in detail in our 2007/2008 Annual Report. Briefly, the changes are as follows:

- **Regulatory Amendments to Facilitate Waste Recycling, Use of Alternative Fuels and New and Emerging Waste Management Technologies** (Registry #[illegible]) – These amendments are intended to encourage the use of waste biomass to produce ethanol and biodiesel, to encourage the use of woodwaste as a fuel; and to streamline approvals for pilot projects for new waste management technologies, including energy-from-waste. MOE received 47 comments on this initiative.

- **EA Process Requirements for Certain Waste Management Sites** (Registry #RA06E0018) – These amendments create a three-track system for approving waste disposal sites: sites meeting certain criteria will be subject to only environmental screening; a second group of sites will be completely exempt from the EA process; and the remaining sites will continue to need full EAs. This package received 26 comments through the Registry, as well as some negative media coverage for its provisions that would allow "fast-tracking" proposals for incinerators.

MOE has also released three proposed Codes of Practice to guide proponents (and to a lesser extent, the public) through the EA process (Registry #PA06E0009). The ministry provided a 90-day comment period on these guides, and as of mid-May 2007, no decision has been posted on the Registry. The guides explain how to:

1. prepare and review terms of reference;
2. consult with the public; and
3. use mediation.

ECO Comment on Reforms to Date

For years, the ECO has pointed out that an effective EA process – a process with both integrity and teeth – is essential to protect Ontario's environment. The EA Advisory Panel similarly recommended that the ministry develop guiding EA principles that embrace, among other things, the precautionary principle and the concept of "avoidance first". MOE's own language promises "a faster yes or a faster no for applicants while completely protecting the environment." The changes unveiled thus far seem weighted towards delivering the "faster yes". But the ability of the system to deliver a "faster no" – or indeed any "no" at all – remains unclear so far.

Unfortunately, it does not appear that MOE's reform initiatives will address a number of the on-going weaknesses described in recent ECO annual reports, including inadequate transparency and public consultation provided under the Class EA process, and the need for better enforcement of the *EAA*. These concerns, also raised by the EA Advisory Panel, are summarized below.

Weak consultation under class EA

The ECO's 2003/2004 Annual Report raised concerns about inadequate transparency and public consultation under Class EA processes, especially for site-specific environmental permits, licenses and approvals flowing out of such processes. The ECO recommended that public consultation practices under the *EAA* become consistent with the minimum rights enshrined in the *EBR*, particularly with regard to permits, licenses and approvals. The EA Advisory Panel made essentially the same recommendation. In October 2006, MOE released a proposed Code of Practice for public consultation during the EA process (see Registry # PA06E0009). Unfortunately this document, if finalized, would simply confirm the inadequate *status quo* public consultation rules with regard to Class Environmental Assessments.

Related to this issue, in July 2005, MOE advised that it was "developing a 'user's guide' to help interested stakeholders and members of the public better understand their rights under the Class EA process." MOE's March 2007 update noted that a draft Class EA Code of Practice had been developed, with a public comment opportunity anticipated for the spring of 2007. However, based on MOE's brief description, it appears that this particular Code of Practice will provide, primarily, advice to proponents, and likely will not help the concerned public better navigate the complex world of the Class EA process.

Need for better enforcement of the EAA

The ECO noted in 2003/2004 that "many applications for investigation under the *EBR* have involved alleged violations of Class EAs and concerns that proponents were not adequately monitored by MOE." The alleged violations often came to light long after the six-month limitation period for prosecutions had expired. Therefore, the ECO recommended (as did the EA Advisory Panel) that MOE consider setting a longer (two-year) statute of limitations for prosecutions under the *EAA*.

In a March 2007 update, MOE did not clarify whether the limitation period for prosecutions under the *EAA* might be lengthened; however, the ministry implied that the issue would be irrelevant, because prosecutions will probably not be occurring under the *EAA* in future. MOE advised that "the new Environmental Assessment Compliance Strategy will be used to determine the most appropriate abatement and/or enforcement tool for incidents of non-compliance." MOE stated that the EA Compliance Strategy is an internal document, but revealed that "incidents of administrative non-compliance" will be dealt with by education and outreach, while cases involving adverse effects on the environment can be covered under the *Environmental Protection Act* or the *Ontario Water Resources Act*. The alarming implication is that the *EAA* will not be directly enforced in future.

Members of the public devote significant time and energy to participating in EA consultation processes, on the assumption that their input will result in stronger environmental provisions for the projects in question. Undermining enforcement of the *EAA* would represent a significant weakening of the integrity and credibility of the EA process – a weakening that would not be in anyone's long-term interest. Consequences could include more difficult resolution of disputes, and lowered public acceptance of decisions. It would also run directly contrary to a recommendation of the EA Advisory Panel to strengthen inspection and enforcement provisions of the *EAA*.

A weakening of enforcement activity would also erode the public's rights to request investigations under the *EBR*. One prominent *EBR* investigation alleged that the proponent contravened the *EAA* by failing to consult with key stakeholders, such as First Nations (see the 2003/2004 Annual Report, page 70). It is unclear how such investigation requests would be handled, if there were no realistic likelihood of enforcement of the *EAA*. The ECO concurs with the EA Advisory Panel that the new EA Compliance Strategy should be a public document, and should be subject to public consultation.

The ECO will review the continued roll-out of the EA reforms in our 2007/2008 Annual Report.

For ministry comments, see page 215.

Reforming the *Endangered Species Act*

In May 2006, the Minister of Natural Resources announced that his ministry had begun a process to examine possible reforms to the legal protections afforded the province's species at risk. Ontario's existing legislation, the *Endangered Species Act*, was introduced in 1971. This law has long been recognized as being out-dated and ineffective. It granted limited protection for only 42 out of 176 species designated as being at risk in Ontario.

The ECO has called for better protection of Ontario's species at risk in five different annual reports. Three separate *EBR* applications have called for regulatory reform, each of which was denied by MNR at the time. In our 2002/2003 Annual Report, the ECO recommended that MNR "create a new legislative, regulatory and policy framework to better protect Ontario's species at risk and to conform with federal legislation."

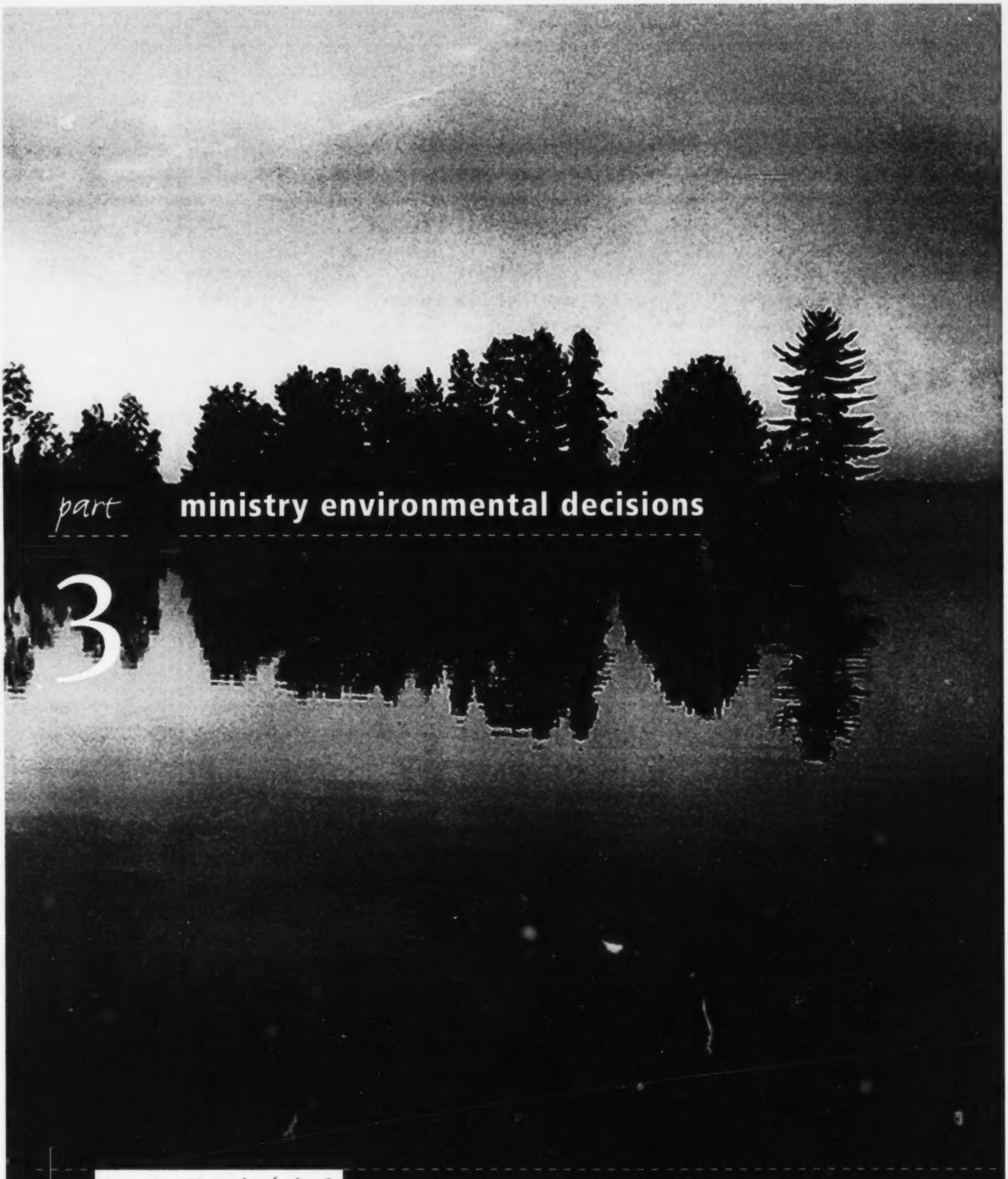
The ECO commends MNR on taking the necessary steps to reform this law, as well as the measures it undertook to consult the public. The ministry posted a proposal notice on the Environmental Registry with a 59-day public comment period when the announcement was first made. In addition, MNR concurrently issued a discussion paper on its legislative proposals, as well as provided an on-line questionnaire. The ministry then held meetings with a broad range of stakeholder groups and First Nations.

In April 2006, the Minister established an independent panel to provide recommendations for the legislative reforms. The *Endangered Species Act* Review Advisory Panel examined best practices from other jurisdictions, as well as solicited input from stakeholders and other experts. In August 2006, the panel submitted a report to the Minister with detailed recommendations related to the legislation, stewardship and financing. In December 2006, the ministry provided a 30-day comment period when the Minister of Natural Resources stated that it was MNR's intention to develop new legislation based on the advisory panel's suggested framework.

In March 2007, Bill 184, the *Endangered Species Act, 2007*, was introduced for First Reading in the Ontario Legislature. MNR also posted a third proposal notice on the Environmental Registry with a new 30-day comment period, including a detailed plain language overview of the proposed legislation. The ministry received 2,001 public comments during all of its consultations. In April 2007, Bill 184 was referred at Second Reading to the Standing Committee on General Government for additional debate and 34 presentations by stakeholders were made to the committee.

In May 2007, Bill 184 passed Third Reading before the Ontario Legislature. The *Endangered Species Act, 2007* will come into force by June 30, 2008. The ECO will review this legislation in detail in our next annual report.

For ministry comments, see page 215.



part 3

ministry environmental decisions

ANNUAL REPORT 2006-2007

Each year the Environmental Commissioner of Ontario reviews a sample of the environmentally significant decisions made by the provincial ministries prescribed under the *Environmental Bill of Rights*. During the 2006/2007 reporting year, 2,000 decision notices were posted on the Environmental Registry by Ontario ministries. Decision notices were posted for the following:

- 38 Policies
- 3 Acts
- 16 Regulations
- 1943 Instruments

The extent to which the ECO reviews a ministry decision depends on its environmental significance and the public's interest in the decision. The ECO undertook detailed reviews of the 12 decisions that appear in the Supplement to this annual report. The ECO has also summarized and highlighted five of these decisions in the following pages of this report.

Protected Areas Law: Ecological Integrity as the First Priority

In September 2004, the Ministry of Natural Resources (MNR) proposed revising the legislation governing Ontario's protected areas. The primary piece of legislation at issue, the *Provincial Parks Act*, was introduced in 1954, when there were only eight provincial parks in Ontario. Over the years, many different stakeholders, independent experts and government panels have called for its reform, on the grounds that the law did not reflect modern science, planning or environmental realities.

In October 2005, Bill 11, the *Provincial Parks and Conservation Reserves Act, 2006 (PPCRA)*, was introduced for First Reading in the Legislature. In June 2006, it passed Third Reading and received Royal Assent. This Act brings all of Ontario's protected areas administered by MNR under a single piece of legislation, and makes significant legal changes to their purpose and management. For the first time, the law now explicitly recognizes that these protected areas have been created to safeguard the province's biodiversity.

Protected areas are the foundation of any concerted effort to conserve biodiversity. The loss of natural areas is one of the greatest threats to biodiversity, both within Ontario and worldwide. Protected areas are meant to maintain and restore ecological and natural heritage values. They should provide havens for wild species, conserving the diversity among and within populations. These areas serve a crucial conservation role at a local level; equally as important, they also should function as an interconnected network at a landscape level. The degree to which the law protects these areas is critical, marking the difference between them existing as simple lines on a map or places where biodiversity is truly safeguarded.

In our 2001/2002 annual report, the ECO recommended that the Ministry of Natural Resources create a new legislative framework for provincial parks and protected areas, including conservation reserves, with the mandate of conserving biodiversity. This recommendation was the result of two separate *EBR* applications, both of which the ministry denied. The *Provincial Parks Act* was out of date and severely flawed, the *EBR* applicants said, because it:

- placed no onus on maintaining and restoring the ecological integrity of parks;
- failed to require adequate public consultation or park management planning; and
- failed to prohibit incompatible activities such as logging, mining, sport hunting and hydroelectric development.

Ontario's system of protected areas includes 329 provincial parks, 292 conservation reserves, and 10 wilderness areas, all of which are managed by MNR. These areas combine to cover approximately nine per cent of the province's land base.

Provincial parks, formerly regulated under the *Provincial Parks Act*, account for 88 per cent of the total land base of protected areas in Ontario. Provincial parks range from small areas intended mainly for recreation, such as Devil's Glen Provincial Park covering just 61 hectares, to huge wilderness parks, such as Woodland Caribou Provincial Park encompassing more than 450,000 hectares. Within this protected area system, 105 operating parks have18,810 vehicle-accessible campsites and 7,000 interior campsites. According to MNR, Ontario's parks host more than 10 million visits each year and generate an economic impact of approximately $380 million a year. At the same time, these protected areas are meant to conserve habitat for many of Ontario's 2,900 species of vascular plants, 160 species of fish, 80 species of amphibians and reptiles, 400 species of birds and 85 species of mammals.

Conservation reserves make up about 12 per cent of the protected areas network. This type of protected area was created in 1994, under the authority of the *Public Lands Act*. According to MNR, conservation reserves were intended primarily to protect significant features and provide recreational opportunities. These areas had fewer restrictions on recreational and commercial uses than provincial parks, although logging and mining was excluded. The ECO has previously reported that "the *Public Lands Act* was not intended or designed to protect natural heritage features, such as sensitive habitats or important species, and thus it is not a good public policy mechanism for protecting these values in conservation reserves."

Wilderness areas are regulated by MNR under the *Wilderness Areas Act*. They make up a tiny portion of the protected areas network. A total of 33 wilderness areas exist in Ontario, although no new wilderness areas have been established in decades. Only 10 areas are located on there own outside existing provincial parks or conservation reserves.

Principles to Guide the Management of Protected Areas

The purpose of the *PPCRA, 2006* is "to permanently protect a system of provincial parks and conservation reserves that includes ecosystems that are representative of all of Ontario's natural regions, protects provincially significant elements of Ontario's natural and cultural heritage, maintains biodiversity and provides opportunities for compatible, ecologically sustainable recreation." For the first time, Ontario's protected areas are expressly mandated to maintain biodiversity. Further, it recognizes that provincial parks and conservation reserves are intended to be managed as a system, rather than as isolated areas.

The most significant change to the governance of Ontario's protected areas is that ecological integrity is now the guiding principle for planning and management. The Act states that the "maintenance of ecological integrity shall be the first priority and the restoration of ecological integrity shall be considered" for all provincial parks and conservation reserves.

The new Act defines ecological integrity as "a condition in which biotic and abiotic components of ecosystems and the composition and abundance of native species and biological communities are characteristic of their natural regions and rates of change and ecosystem processes are unimpeded." The *PPCRA, 2006* further defines ecological integrity as including "healthy and viable populations of native species, including species at risk, and maintenance of the habitat on which the species depend" and "levels of air and water quality consistent with protection of biodiversity and recreational enjoyment." The inclusion of a definition of ecological integrity is of fundamental importance for both ministry staff to administer the Act and for the public to clearly understand the purpose of Ontario's protected areas.

Unlike its legislative predecessor, the *PPCRA, 2006* explicitly recognizes that opportunities for public consultation shall be provided in the planning and management

Goals and Objectives

The legal objective of both provincial parks and conservation reserves will now be "to permanently protect representative ecosystems, biodiversity and provincially significant elements of Ontario's natural and cultural heritage and to manage these areas to ensure that ecological integrity is maintained." This objective is a significant improvement; the old *Provincial Parks Act* was silent in this regard and somewhat weaker objectives for provincial parks were relegated to ministry policy. Prior to this new legislation, conservation reserves regulated under the *Public Lands Act* lacked many basic legal protections.

Provincial parks also have the new legal objective to provide opportunities for "ecologically sustainable outdoor recreation," in addition to providing opportunities for visitors to increase their knowledge of Ontario's natural and cultural heritage. These objectives vary slightly for conservation reserves in that they may be managed to provide "ecologically sustainable land uses, including traditional outdoor heritage activities." Both provincial parks and conservation reserves have the objective of facilitating scientific research and serving as benchmarks to monitor ecological change on the broader landscape.

Classification and Zoning

The *PPCRA, 2006*, akin to its predecessor, recognizes six classes of provincial parks: wilderness, nature reserve, cultural heritage, natural environment, waterway, and recreational class. However, the new Act states the specific objectives of each of these classes; previously, these directions were left to ministry policy. The Act also creates a new aquatic class of provincial park, at a date to be proclaimed later by the Lieutenant Governor.

Mandatory Management Direction and State of Protected Areas Reporting

In our 2003/2004 annual report, the ECO recommended that MNR require the preparation and timely revision of management plans for all protected areas, including provisions for public consultation. At that time, only 38 of 548 (or just seven per cent of) protected areas in Ontario had up-to-date plans that had been approved following public consultation. Without sound planning and conscientious management, Ontario's provincial parks and conservation reserves are little more than 'paper parks' – simply lines on a map. The ECO also observed that the province should undertake a review of whether MNR had adequate resources to implement the ministry's legal responsibilities and policy commitments for protected areas.

Under the *PPCRA*, MNR is required to prepare "management direction" for all provincial parks and conservation reserves. These directions may apply to one or more protected areas and shall identify site-specific management policies to cover a 20-year period. Management directions may take one of two forms, either a detailed "management plan" or a "management statement" when addressing less complex issues. Unlike the *Provincial Parks Act*, the new legislation explicitly requires that public consultation occur when producing, reviewing or amending management direction. The *PPCRA, 2006* also contains language, similar to that used in the *Canada National Parks Act*, which would permit MNR to enter into co-management agreements with First Nations for specific provincial parks and conservation reserves.

Given that ecological integrity is now the first priority for all provincial parks and conservation reserves, the ECO believes that indicators of ecological integrity should be expressly identified in the management plan or statement for each protected area. Ideally, the use of identified indicators and measurable objectives in each management direction would form the basis of each protected area's ecological monitoring program. In addition, MNR should ensure that each management direction contains a description of how visitor use stresses the protected area's ecological integrity and how such stresses are being mitigated or eliminated.

The *PPCRA, 2006* requires the preparation of a planning manual, to replace the "Ontario Provincial Parks Management Planning Manual." Formerly known as the MNR Blue Book, it contains the detailed policy directions for provincial parks and last was updated significantly in 1992. MNR states that the policies affecting protected areas that were the result of Ontario's Living Legacy (OLL) will continue in their current form.

The *PPCRA* requires that MNR produce a state-of-the-parks report every five years (similar to Parks Canada's system-wide reports for national parks). The state-of-the-parks report will contain an assessment of the extent to which the objectives of provincial parks and conservation reserves are being achieved, including "ecological and socio-economic conditions and benefits, the degree of ecological representation, number and area of provincial parks and conservation reserves, known threats to ecological integrity of provincial parks and conservation reserves and their ecological health and socio-economic benefits." The Act states that MNR must post these reports on the Environmental Registry.

Major Industrial Uses

The *PPCRA, 2006* explicitly prohibits the following activities in protected areas:

- the commercial harvest of timber;
- the generation of electricity;
- prospecting, staking mining claims, developing mineral interests or working mines; and
- extracting aggregate, topsoil or peat.

The inclusion of these prohibitions is a dramatic improvement compared to the old legislative framework; historically, such details were left to the whim of policy. However, the Act does include numerous exceptions to these prohibitions, such as allowing for electricity generation facilities for communities that are not connected to the Independent Electricity System Operator-controlled grid.

The most environmentally significant exception to these prohibitions is that commercial timber operations are allowed to continue in Algonquin Provincial Park. The Act essentially defers to the *Algonquin Forestry Authority Act*, which states that the management of this protected area be balanced between recreation and "the public interest in providing a flow of logs from Algonquin Provincial Park." As stated in our 2005/2006 annual report, the ECO urges MNR to conduct a public review of the appropriateness of commercial logging in Algonquin Provincial Park and to address "how the proposed park management goal of ecological integrity would be achieved if this policy is allowed to continue."

Non-Industrial Uses

Camping, excursions, fishing and other "non-industrial uses" have long been associated with Ontario's protected areas. However, the type, intensity and/or timing of certain of these activities may be incompatible with ecological integrity. Further, what may be an appropriate activity in one protected area may not be suitable in another area. Experts also recognize that any determination of what is an appropriate activity should not be based on the potential for revenue generation.

With few exceptions, the new legislation does not address non-industrial uses; their control is left to regulation or policy.

However, the *PPCRA, 2006* does borrow from ministry policy on one specific class of non-industrial activity, and states that visitors to Ontario's eight wilderness class parks may only travel by "non-mechanized means" or engage in "low-impact recreation." These terms are not defined, but MNR will presumably provide further detail in the regulations to be made under the legislation.

The new Act does not change the manner in which hunting is permitted in Ontario's protected areas: by default, recreational hunting is permitted in all conservation reserves, and by exception, recreational hunting is permitted in provincial parks. However, that exception has been extended to allow recreational hunting in 132 provincial parks. Consequently, recreational hunting is allowed in more than two-thirds of Ontario's protected areas. The ECO notes that the recreational harvest of species can conflict with the maintenance of ecological integrity in a protected area and can impair their utility as true ecological benchmarks or reference areas. The Act does not explicitly address trapping, but existing MNR policy dictates that it will be phased out of all provincial parks by no later than January 2010.

One recurring "appropriate use" issue that the new legislation does not address is that of cottages in provincial parks. Algonquin Provincial Park has 305 cottages and Rondeau Provincial Park has 295 privately occupied cottages within their respective boundaries. These cottages currently have 25-year leases that are to expire in 2017. Due to political pressure, governments of the day have routinely renewed these leases, despite a clear commitment in MNR policy that cottages within protected areas are inappropriate. Ideally, this commitment will be asserted in regulations to be made under the Act.

ECO Comment

The *Provincial Parks and Conservation Reserves Act, 2006* is a dramatic improvement to the legislative framework governing Ontario's protected areas. The ECO commends the Ministry of Natural Resources for its diligent effort to enact this legislation. While not flawless, this new legislation moves Ontario from the back of the pack to near the forefront of protected areas law in Canada. It is a promising beginning to the much-needed overhaul of the management regime for our provincial parks and conservation reserves. MNR must now revise the regulations and policies for protected areas and the ECO will report on these changes in future annual reports.

Despite legislative improvements, the ECO has two practical concerns with how Ontario's protected area system is being managed overall by the Government of Ontario. First, both the ECO and the Auditor General of Ontario have expressed concern that the Ontario Parks branch of MNR does not have sufficient resources to properly fulfil its mandate. Ontario is among the only jurisdictions in North America that is attempting to run its protected areas system on a cost recovery basis; as a result, its funding is very low, especially given the vast amount of land that is involved.

The Government of Ontario allocates approximately $15 million a year for MNR to plan, manage, protect, and monitor almost 94,000 km^2 of protected areas in Ontario. In our 2003/2004 annual report, the ECO noted that almost half of all operating provincial parks do not have sufficient staff or funding to meet existing minimum standards of operation. Further, the majority of non-operating parks were visited only once a year or not at all by ministry staff. Therefore, if a protected area is not paying for itself, there is no assurance that the statutory requirement to maintain ecological integrity is being upheld. The ECO believes that it will be extremely difficult for MNR to adequately administer and enforce the *PPCRA, 2006* unless there are significant increases to its budget.

Second, the ECO is concerned that the ecological integrity of protected areas continues to be adversely affected by activities undertaken outside their boundaries. It is a common fallacy that protected areas are unimpaired swaths of wilderness exhibiting pristine natural conditions. In reality, Ontario's provincial parks and conservation reserves are threatened by numerous stresses, some of which originate beyond their boundaries. In most cases, the boundaries of protected areas are artificial constructs that do not reflect natural boundaries. As such, issues of concern outside of a protected area that affects its management cannot be effectively addressed by Ontario Parks staff.

Federally, the *Canadian Environmental Assessment Act* may require that an environmental assessment be conducted for any project outside the boundaries of a national park that may adversely affect its ecological integrity. Ontario's laws fail to contain any similar safeguards. Unlike national parks, the land inside and outside of most protected areas in Ontario has the benefit of being managed by the same entity; yet, the Government of Ontario has no explicit mechanisms to restrict incompatible land uses near the boundaries of its protected areas.

What is needed is an ecologically sensible landscape-level approach to Crown land management. Different branches or ministries – all part of the same government – should not be seen as threatening or competing against each other's interests. Protected areas should be given the priority and recognition that they deserve. Provincial parks and conservation reserves must be managed on an greater ecosystem basis in order to fulfil their mandate of protecting Ontario's biodiversity. Wildlife and natural processes know no boundaries; failing to take this wider perspective imperils our protected areas.

For ministry comments, see page 215.

Planning Act Reforms: Providing Municipalities with New Tools for Sustainability

In December 2005, the Minister of Municipal Affairs and Housing (MMAH) tabled Bill 51, the *Planning and Conservation Land Statute Law Amendment Act, 2006 (PCLSLAA)*. The substantive parts of the Bill, which received its Third Reading on October 12, 2006, and Royal Assent on October 19, 2006, came into force on January 1, 2007.

The legislative amendments in the *PCLSLAA* represent one element in the Ontario government's broad package of land use planning reforms launched following the election of the new government in October 2003 (as noted in the ECO's 2004/2005 Annual Report).

The purposes of the amendments in the *PCLSLAA* were outlined in an MMAH backgrounder that accompanied the introduction of Bill 51 in the Ontario legislature. The PCLSLAA is intended to:

- provide municipalities with the tools and flexibility to address their needs, including protection of employment lands, sustainable development (e.g., environmentally-friendly design), intensification and brownfields revitalization;
- allow for greater information, participation, consultation and decision-making to take place early on in the process, giving local residents and community leaders more opportunity to play their crucial part in planning their communities; and
- create a more transparent and accessible land use planning process; and
- make the Ontario Municipal Board (OMB) more effective, transparent and user-friendly.

A number of the amendments are intended to address specific concerns about the OMB, including the following:

- the OMB had the power to substitute its opinions for the decisions of elected municipal councils;
- appeals before the OMB forced municipalities to spend limited resources to defend decisions that had been subject to the land use planning process;
- the OMB process was inaccessible to members of the public, and the interests of ordinary residents were not given equal weight to those of developers; and
- municipalities were not able to respond within tight deadlines of development applications, leading to a greater number of appeals before the OMB.

Bill 51 attempts to address some of these issues, but appears to have created other problems in the process. Some of these are summarized later in this section.

Other amendments clarify the degree of discretion and independence that decision-makers under the *Planning Act* have in relation to municipal decisions and provincial policies. When making a planning decision under the Act, the decision-maker, whether an approval authority or the OMB, must have regard to any decision that is made by a municipal council or another approval authority relating to the same matter, as well as to any supporting information and material that the municipal council or approval authority considered in making the decision. This provision is somewhat unusual given that administrative tribunals typically are not bound by precedent.

In addition, decision-makers on planning matters must be consistent with provincial policy statements in effect *at the time of the decision*, and must conform with, or not conflict with, the provincial plans in effect on that date, such as the Niagara Escarpment Plan, the Oak Ridges Moraine Conservation Plan and the Greenbelt Plan.

Furthermore, there is now a requirement that the OMB have regard to recommendations and decisions of municipalities. At first reading of Bill 51, the Minister of Municipal Affairs and Housing stated that the reforms would "make municipalities and local councils more accountable for planning matters and help reduce the number of appeals to the Ontario Municipal Board as well as the duration of hearings."

These are major changes in Ontario, and should promote more consistent decision-making in the years ahead.

Local Appeal Bodies and Limits on OMB Appeals

The *PCLSLAA* provides that municipal councils which meet prescribed conditions may establish and appoint a local appeal body (LAB) to hear appeals of certain local land use planning matters. The LAB may hear appeals of decisions of the Committee of Adjustment and decisions on consents, and will have all of the powers of the OMB on these appeals. An appeal on a question of law from a LAB decision may be made to the Divisional Court, if leave is granted.

Prior to the *PCLSLAA*, any person or public body had a right of appeal to the OMB regarding all or part of an official plan. The *PCLSLAA* limits this right of appeal to: a person or public body that made oral submissions at a public meeting or written submissions to the council before the plan was adopted; the Minister; the appropriate approval authority; and, where a request has been made to amend the plan, the person or public body that made the request. Similar limitations on this broad right of appeal also apply to changes to zoning by-laws.

The *PCLSLAA* adds a new matter of provincial interest to the *Planning Act*. In addition to the other matters of provincial interest listed, decision-makers under the *Planning Act* must now have regard to "the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians." This should have important implications for promoting positive alternatives for transportation in southern Ontario communities.

Municipal Tools for Sustainable Communities

The *PCLSLAA* expands the scope of community improvement plans to include improvement of energy efficiency. Municipal grants and loans to support implementation of a community improvement plan may be made to pay for costs related to environmental site assessment, environmental remediation and provision of energy efficient uses.

The *PCLSLAA* clarifies that the municipal authority to pass zoning by-laws regulating the construction of buildings or structures includes (and, despite the decision of any court, is deemed always to have included) the authority to regulate the minimum area of a parcel of land, the minimum and maximum density, and limits on the height of development in the municipality or areas defined in the by-law.

The *PCLSLAA* should also give municipalities a number of tools to help promote environmentally-sustainable development and design. When the minister introduced the bill, he noted that, "municipalities would have new authority to set conditions for how new subdivisions are designed in ways that maximize energy efficiency and include transit- and pedestrian-friendly design elements along streets and highways...." The minister also stated that the Act gives "municipalities more powers to shape the look and feel of their communities through new authority to consider external design details when they approve site plans." In practical terms, municipalities may be able to:

- expand the scope of community improvement plans to include improvement of energy efficiency;
- use municipal grants and loans to pay for costs of private and public sector developers related to environmental site assessment and remediation;
- require developers to address the sustainable design of buildings and other sustainable design elements; and
- consider the extent to which designs promote conservation of energy.

Complete Application

A council or a planning board may require that an applicant requesting an official plan amendment (OPA), zoning by-law amendment or subdivision approval provide any information considered necessary, if the official plan provides for this. Once an applicant requests an OPA, zoning by-law amendment or subdivision approval, the council, planning board, or approval authority is required to notify the applicant as to whether or not the application is complete. An applicant who is advised that their application is not complete has 30 days by which to make a motion to have the OMB determine whether the information and material have in fact been provided or whether a requirement for additional information is reasonable. The OMB's determination on this matter is not subject to appeal or review.

Several amendments provide the public greater access to the land use planning process, including information related to that process. A new provision in the Act requires that any information that is required to be provided to a municipality or approval authority under the *Planning Act* be made available to the public. In the course of preparing an official plan, the municipal council must meet additional consultation requirements. In addition to consulting the approval authority on the preparation of the plan, the council must now provide the approval authority with an opportunity to review supporting information and material, even if the plan is exempt from approval.

The *PCLSLAA* will have a major impact on some future energy projects, because it allows the Ontario government to make regulations exempting new energy projects from the *Planning Act* if they are approved or exempted under the *Environmental Assessment Act (EAA)*. The EA process normally will not address site-specific zoning issues, such as setback requirements, construction, traffic and overall official plan requirements. Municipalities won't have an opportunity to identify appropriate locations "for energy undertakings from a land use planning perspective.

In addition, if it is determined that an official plan needs to be revised, or if a zoning by-law is being amended in relation to a development permit system or a three-year zoning by-law update is undertaken, the municipal council must ensure that at least one open house is held to give the public an opportunity to ask questions about the information and material available.

Public Participation & *EBR* Process

Bill 51 was introduced in the Ontario Legislature on December 12, 2005, and a proposal for the draft Act was placed on the Registry the next day, providing the public with a comment period of 75 days. Since MMAH had not posted a Registry decision notice by the time this review was completed in late May 2007, the ECO is uncertain as to exactly how many comments were submitted, what issues, concerns and recommendations those comments contained, or how they were considered by the ministry. However, a good indication of the perspectives of various stakeholders is available in the submissions presented to the Standing Committee on General Government during hearings on Bill 51.

Overall, there was strong support for the proposed amendments from municipalities, along with recommendations to further strengthen municipal powers. There was also a fair degree of support from ENGOs and other citizens' groups, although specific issues were raised. In contrast, developers and homebuilders' associations generally expressed concerns that the legislative changes would result in added costs, delays and uncertainty in the planning process.

Stakeholders involved in development opposed the amendment requiring that planning decisions be consistent with the Provincial Policy Statement (PPS) and conform with provincial plans in effect at the time of the decision. They recommended that the province ensure that applications be assessed against the plans and policies in force on the date of the application, rather than the date of decision.

A number of stakeholders expressed concerns about amendments which limit the right of appeal to the OMB and the adding of parties to a hearing. One environmental group noted that these provisions could be unnecessarily restrictive for community-based and public interest interveners since they usually have limited resources. Another stakeholder suggested that by excluding local residents who did not make an oral or written submission before the council made its decision, the proposed amendments would limit public participation and favour participation by developers and public bodies. A number of ENGO stakeholders also encouraged the Ontario government to develop a framework to provide intervener funding to support community participation in the planning process.

Many commenters addressed a proposed exemption from the *Planning Act* for energy projects approved or exempted under the *EAA*. A number of stakeholders, including the Canadian Wind Energy Association and the Ontario Waterpower Association, supported this amendment out of a desire to eliminate duplication and overlap currently existing between the EA and planning processes. In contrast, many municipal and ENGO stakeholders strongly opposed this exemption on the grounds that energy undertakings should not be exempted from the land use planning process, even if they have been through an EA.

A number of concerns were also raised regarding proposed amendments to the *Conservation Land Act (CLA)*. Stakeholders supported establishing a registry under the CLA, but suggested there was a need for a consolidated registry that would capture conservation easements under other laws, such as the *Ontario Heritage Act*. The Ontario Land Trust Association urged amendments to the *Assessment Act* requiring property assessors to evaluate the impact of a conservation easement on a property's value for assessment purposes, and another conservation stakeholder group recommended that the list of purposes for which conservation easements and covenants are appropriate should include walking trails, recreation, and areas of aesthetic or scenic interest.

ECO Comment

Overall, the ECO commends the Ministry of Municipal Affairs and Housing for implementing the reforms contained in the *PCLSLAA*. In the ECO's 2005/2006 Annual Report, the Commissioner reviewed the state of provincial planning in relation to adaptation to a changing climate. Municipalities may be able to use some of the new provisions put in place by the *PCLSLAA* to adopt strategies for adapting to the effects of climate change. The *Planning Act* now requires municipalities to have regard to the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians. This is important if Ontario communities are to move toward sustainability.

The ECO agrees with those who argued that the loss of broad appeal rights for local residents under the *PCLSLAA* is significant and unfortunate. In the past, public interest group appeals in relation to natural heritage and development issues have resulted in many important OMB decisions that have protected natural heritage and limited development on agricultural land. Although in some cases, leave to appeal rights under the *EBR* may be available to interested individuals and groups, these will apply in a very narrow range of cases and, overall, there will be a reduction in appeal rights. The ECO intends to monitor implementation of these new provisions.

The ECO also has concerns about the regulation-making provision that could exempt some energy projects from the *Planning Act* if they have been approved or exempted under the *EAA*. The ECO echoes concerns expressed by municipalities and ENGOs relating to the need for energy undertakings to be evaluated according to land use planning principles. Some public concerns and conflicts related to the siting of wind turbine sites could be addressed if MMAH and the Ministry of Natural Resources were to plan appropriate exclusion zones for wind power development.

While the OMB will continue to have a vital role in land use planning decisions, a number of its powers are curtailed and returned to the municipalities. The ECO applauds these changes because they should increase accountability and transparency in municipal decision-making and promote sustainability. The ECO intends to monitor how these and other amendments contained in Bill 51, are implemented and report on this in future annual reports.

For ministry comments, see page 216.

MNR's Aggregate Resources Program Manual

In April 2006, MNR finalized its Policies and Procedures Manual for the Aggregate Resources Program (referred to, hereafter, as "the Manual"). The Manual is intended for the use of MNR staff members who administer the *Aggregate Resources Act (ARA)*, its regulations and the Aggregate Resources of Ontario Provincial Standards (the "Provincial Standards") adopted in 1997. By law, applications for licences and permits and the operation of pits and quarries must meet the requirements of the *ARA* and the Provincial Standards.

The Manual is intended to provide a consistent approach to the administration of the *ARA* across the province and a transparent process for the aggregate industry, stakeholders, municipalities and others. The updated Manual is over 700 pages long and contains approximately 180 policies and procedures covering all aspects of the aggregate resources program (see the ECO's detailed review on page 79 of the Supplement to this Annual Report).

New Licence Application Process

Arguably, the most important procedure in the Manual sets out a 46-step process for applications for new licences. The application process for new pits and quarries is "proponent-driven". It is the proponent's responsibility to prepare the application and supporting studies, conduct public consultation, and resolve concerns and objections. MNR staff will review the application at various stages of the process to ensure that all information has been submitted as required, and all steps have been completed. If MNR staff have any concerns or objections related to its mandate, the ministry must register its objections during the comment period similar to other circulated agencies and the public. MNR staff can refer the application to the Ontario Municipal Board for a decision, or make a recommendation to the minister to either issue or refuse to issue the licence.

Considering Impacts on the Environment

The purpose of the *ARA* is to minimize the adverse environmental impact of aggregate operations, while managing Ontario's aggregate resources to meet provincial, regional and local demand. The Act requires the decision-maker to consider the effect of a proposed operation on the environment. In contrast, the Provincial Standards and Manual do not require comprehensive assessment of impacts on the environment: they require only certain aspects of the environment to be considered in technical reports. Technical reports on hydrogeology, natural environment, cultural heritage resources and noise are required to support licence applications.

Applicants must prepare a Natural Environment Level 1 report which determines whether there is fish habitat or any significant natural heritage features (wetlands, endangered and threatened species, Areas of Natural and Scientific Interest, woodlands, valleylands and wildlife habitat) on-site or within 120 metres of the site. If any of those features exist, then a Level 2 report is required to assess negative impacts and propose preventative, mitigative or remedial measures.

The Manual only requires identification and protection of "significant" natural heritage features, as defined in the Provincial Policy Statement (PPS) under the *Planning Act*. For example, proponents are not required to address regionally or locally significant wetlands. Other natural heritage features, such as woodlands and wildlife habitat, may not be addressed unless a municipality has already inventoried the area and identified them as "significant."

The Manual also sets out requirements for Level 1 and, if necessary, Level 2 Hydrogeology Reports, which delineate the location of the water table and assess the impacts of proposed operations on surface and groundwater.

Additional Requirements in Environmental Plan Areas

New policies describe the additional requirements and restrictions applying to aggregate operations in the areas covered by the Oak Ridges Moraine Conservation Plan (ORMCP), Niagara Escarpment Plan (NEP) and the Greenbelt Plan. The Manual states that the *ARA* is not specifically prescribed under the *Oak Ridges Moraine Conservation Act (ORMCA)*, and MNR should merely "*have appropriate regard to* its requirements when making decisions on the issuance of, or amendments to, licences and wayside permits under the *ARA*." The ECO believes this is a serious gap in the implementation of the *ORMCA* and frustrates the intent to place special conditions on aggregate operations on the Oak Ridges Moraine.

Municipal Regulation of Pits and Quarries

The policy in the Manual describing municipal regulation of pits and quarries sets forth MNR's interpretation that *ARA* decisions take precedence over almost all municipal decisions. Municipalities can control the *location* of pits and quarries through zoning lands to permit aggregate operations, but they cannot regulate depth of extraction or other matters.

Public Participation Policies

The Manual outlines *ARA* and *EBR* notification requirements and appeal rights, as well as descriptions of the public notice and consultation requirements for each type of licence or permit application. Applications for wayside permits for road projects and all aggregate permits on Crown lands are not posted on the

Environmental Registry. New licences (except in newly designated areas of the province), changes to licence conditions, and some site plan amendments are posted on the Environmental Registry for public comment. In addition, most licence revocations are posted on the Registry. In total, there are 12 prescribed instruments under the ARA subject to Part II of the *EBR*.

Public Participation & *EBR* Process

MNR posted the proposal for 60 days, then extended the comment period by a further 30 days. The ministry received 45 comments from municipalities, conservation authorities, planning agencies (e.g., the Niagara Escarpment Commission), consultants and industry, interest groups and individuals, and MNR staff.

MNR said that many of the comments suggested changes that would require revisions to the *ARA* and/or the Provincial Standards, which were not the subject of the consultation. Commenters recommended: changes and additions to the technical reports; increasing commenting periods and notification distances; and increasing the municipal portion of licence fees.

MNR also acknowledged other comments recommending broader changes to its aggregates program:
- the policy Manual should be combined with the Provincial Standards into regulation;
- a stronger provincial regulatory role is required;
- the number of aggregate inspectors is inadequate; and
- a provincial aggregate strategy should be developed.

Several municipalities asked for more power to regulate pits and quarries, challenging MNR's interpretation of the *ARA*. Conservation Ontario asked for mandatory notification of more types of site plan amendments, recommending that conservation authorities be circulated on all proposed site plan amendments that have implications for natural heritage, natural hazards, and/or surface and groundwater resources. Individuals, environmental and community groups also asked for mandatory consultation on all types of site plan amendments.

The issue of "downward creep" was also raised by municipalities and interest groups. They described a scenario where the proponent gets approval to extract aggregate above the water table and then, a few years later, obtains permission to extract aggregate below the water table through a "minor" site plan amendment (such an amendment does not require the same degree of study or public comment opportunities). MNR did develop a new policy in response to these concerns, and will now require formal notice and comment for site plan amendments for below water table extraction.

Substantial concern was expressed about the Natural Environment Report requirements, because so few natural heritage features have been identified by MNR or municipalities as "significant". Commenters recommended that, at a minimum, all applications should identify the existing natural resources regardless of the label "significant." They also recommended that the Manual recognize new 2005 PPS provisions regarding natural heritage systems. (In August 2007, MNR advised that the final version of the manual policies recognize the new 2005 PPS provisions regarding natural heritage systems.)

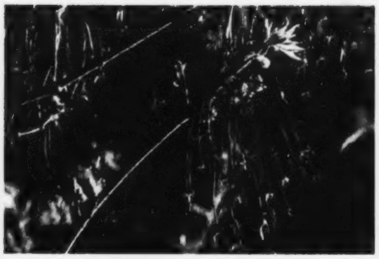
Many commenters, including municipalities and conservation authorities, also expressed disappointment that the revised Manual is silent on source water protection, and stated that the Manual does not provide sufficient direction to ensure that studies properly evaluate impacts on groundwater and surface water.

Several municipalities requested more specific rules for "progressive" and final rehabilitation, and challenged the description of aggregate operations as "interim" land uses. A comment submitted by one region said that quarrying almost invariably permanently changes the landscape and can preclude many other subsequent land uses. It also said the current policy framework makes it very difficult to address cumulative impacts and to set limits on how many "holes" (future lakes) will be imposed on a given area.

A number of commenters raised concerns about the ability of MNR to oversee the aggregate industry, and stated that the Ministry of the Environment, municipalities and conservation authorities should be more involved in approvals and inspections.

MNR staff from other program areas provided comments on the draft Manual during the *EBR* comment period. Most of the MNR staff concerns related to the Natural Environment Report Standards and the policies relating to the ORMCP. Their comments illustrate the ministry's conflicting roles, overseeing both resource extraction and natural heritage protection.

Industry commenters raised few concerns, perhaps because MNR had conducted separate discussions with them prior to posting its Registry proposal notice. One commenter raised concerns that the procedures were too onerous. The Ontario Stone, Sand and Gravel Association (OSSGA) was concerned that the Manual states that all operations will cease on public holidays, using the *Interpretations Act* definition of holidays.



MNR's Description of the Effect of Public Comments on the Decision

MNR's decision notice did not clearly describe the changes made between the draft and final Manual, or the effect of public comments on the ministry's decision. MNR said that some significant changes were made, but did not describe them. The public has had difficulty accessing the finalized version of the Manual, which is available on MNR's internal intranet site but not its public web site. The ministry has agreed to provide copies on disc upon request, but has declined requests by the ECO and members of the public to make the final text available on its public web site.

Other Information

MNR addressed some of the higher level issues raised during the consultations on the Manual – as well as issues raised in *EBR* applications for review – by amending the *ARA* and regulation, and issuing new direction to MNR staff regarding rehabilitation and compliance (see the ECO summary of an *EBR* application for review on page 139 of the Annual Report and page 186 of the Supplement). In October 2006, MNR announced that the *ARA* would apply to more of Central and Northern Ontario, and raised the fees and royalties, effective January 1, 2007.

ECO Comment

The policies and procedures in the Manual do not require adequate information gathering or full consideration of potential impacts and cumulative effects on the environment. Information about all natural heritage should be required and considered by MNR when considering approval of a pit or quarry application. Municipalities asked the province to adequately protect local and regional natural environment features and water resources through the *ARA*; otherwise, municipalities want additional powers to mitigate the environmental and health impacts of aggregate sites on their residents and communities. MNR should consider these legitimate concerns, particularly as municipalities and conservation authorities have primary responsibility for source water protection planning.

MNR said it couldn't address most of the comments on the Manual because it was bound by existing provisions of the Act and Provincial Standards. The ECO agrees with the many commenters who suggested MNR update the 1997 Provincial Standards to reflect recent changes in provincial laws and policies and address public and stakeholder concerns. Some of the matters covered in the policy Manual should be incorporated into the Provincial Standards by regulation in order to make them enforceable. MNR should make the final text of the Manual available on its web site and ensure that the public is able to access future revisions and updates.

The Manual should better integrate the provisions of provincial land use plans with the *ARA* processes. The ECO believes that MNR's *ARA* decisions must conform to the ORMCP, and urges the ministry to resolve this implementation gap. Applicants need to know precisely what additional studies and evaluation reports are required and what criteria MNR staff will use to make decisions about applications in these areas. Further, MNR must incorporate the requirements of its technical guidance for the ORM and Greenbelt Plan into the Provincial Standards and Manual.

The policies in this Manual describe a minimal role for MNR in overseeing the applications process, and resolving conflicts or concerns, even on issues within the ministry's mandate. As discussed on pages 79–89 of the Supplement and pages 47–49 of the Annual Report, the ECO believes a new mechanism is needed for resolving disputes about proposed aggregate operations. The mechanism should allow for applications with unacceptable environmental impacts to be screened out at an early stage.

The ECO recently examined MNR's capacity to administer its aggregates program (along with other mandated responsibilities) in a special report released in April 2007. Addressing MNR's capacity problems is a necessary first step in strengthening the ability of MNR staff to administer the aggregates resources program.

For ministry comments, see page 216.

The *Clean Water Act*

In October 2006, the Ontario government passed the *Clean Water Act, 2006 (CWA)* to protect existing and future sources of drinking water. The *CWA* stems from Justice O'Connor's 2002 Report of the Walkerton Inquiry (Part II), which investigated the root causes of the tainted water tragedy that unfolded in the spring of 2000. In 2002 and 2003, the Ontario government implemented a number of the recommendations set out in the Walkerton Report to address the treatment and distribution of drinking water by enacting the *Safe Drinking Water Act*. The *CWA* supports the implementation of a further 22 of Justice O'Connor's recommendations by establishing legislation that is designed to protect drinking water at its source.

The stated purpose of the *CWA* is "to protect existing and future sources of drinking water." The Act aims to achieve this goal by requiring each community to protect its own drinking water supplies by:

- identifying potential threats to its drinking water sources through the production of a science-based technical assessment report of its watershed; and

- developing and implementing source protection plans that are designed to reduce or eliminate the identified threats.

As recommended by Justice O'Connor, the *CWA* takes a local approach to source water protection. The Act establishes a system of local watershed-based planning areas called "source protection areas," some of which are grouped into "source protection regions." Responsibility for the risk assessment and source protection planning is then assigned to a "source protection authority" (SP Authority) for each area (or to a lead SP Authority for each region). In most cases, this will be the local conservation authority (CA). The SP authority will then establish a multi-stakeholder committee, called a "source protection committee" (SP Committee), which will include municipal, agricultural, industrial, commercial, environmental, and other representatives.

Each SP Committee – working together with the municipalities, CAs, provincial agencies and the public – will be required to develop an assessment report and a source protection plan (SP Plan) for its region. The assessment report will:

- identify the "vulnerable areas" within each watershed;
- identify the "drinking water threats" in each vulnerable area (i.e., the human activities or conditions that may adversely affect the quantity or quality of water that may be used as a source of drinking water); and
- determine which drinking water threats constitute "*significant* drinking water threats."

Once the assessment report has been approved by MOE, the SP Committee is then required to prepare a SP Plan to address the threats identified in the assessment report. The SP Plan must include:

- a "significant threat policy" to address significant drinking water threats;
- monitoring policies to evaluate the effectiveness of the SP Plan; and
- if directed by MOE, a "designated Great Lakes policy" to achieve provincially-developed Great Lakes drinking water targets.

To address significant drinking water threats, the *CWA* authorizes SP Plans to designate certain activities as either "regulated" (thereby requiring that a "risk management plan" be developed) or "prohibited" in areas where those activities would pose a significant threat. However, the list of activities that may be designated as prohibited or regulated must be prescribed by regulation under the *CWA*. As of June 1, 2007, no such regulations have been developed. The SP Plan may also identify "restricted land uses" on designated lands, for which a person may not obtain a building permit or apply for a prescribed approval under the *Planning Act* without first obtaining a "notice" confirming that the proposed development satisfied certain requirements.

Once a SP Plan has been approved by the Minister of the Environment, the *CWA* puts the municipality (in most cases) in charge of implementing and enforcing the Plan. The municipality may, however, delegate its enforcement responsibilities to another public body, such as the public health unit, SP authority or province, if that body agrees to do so.

Each municipality (or its designate) must appoint a "risk management official," who is responsible for reviewing all submitted risk management plans and all development proposals related to "restricted land uses." The municipality must also appoint "risk management inspectors" to enforce the rules under Part IV of the *CWA*. The *CWA* empowers the municipality to prosecute persons who have contravened the prohibited or regulated activity provisions or have failed to comply with an enforcement order.

In enacting the *CWA*, the province recognized that the planning process will take years to complete. MOE anticipates that the SP Plans will not be submitted to the ministry for approval until 2010 to 2012. Therefore, the *CWA* includes some interim measures, such as requiring interim progress reports and interim risk management plans, to address significant threats during the period before the SP Plans take effect.

Implications of the CWA

Source protection – and the associated costs – is a local responsibility

Beyond the province's role in providing the legislative and regulatory framework for the source protection process, the *CWA* places the primary responsibility for protecting drinking water sources on local communities. The bulk of the initial planning responsibilities – including watershed analyses, issues evaluations, threats inventories, vulnerability assessments, etc. – are expected to be delegated to the municipalities and CAs.

The province has committed approximately $120 million from 2004 to 2008 to enable municipalities and CAs to conduct technical studies and build the necessary professional capacity and expertise for the development of the assessment reports and SP Plans. However, no cost analysis for the source protection planning process has been published, so it is not known whether this level of funding will be sufficient.

In addition, that funding does not extend to the substantial responsibilities of municipalities (or their delegates) to implement and enforce the source protection measures. These unfunded responsibilities include reviewing risk management plans, conducting inspection and enforcement activities, participating in appeals to the Environmental Review Tribunal, amending official plans and zoning by-laws, and potentially addressing identified municipal threats to drinking water, such as improving sewage treatment facilities.

In response to widespread stakeholder concerns about the issue of costs – including numerous comments from farmers and businesses about their own personal costs of complying with the SP Plans – the proposed *CWA* was amended before third reading to include a new "Ontario Drinking Water Stewardship Program" to provide financial assistance to persons affected by the *CWA* and to those administering programs related to the SP Plans. Initially, $5 million will be available for 2007/2008 under this program for early adopters who take action to reduce threats to drinking water, as well as a further $2 million for education and outreach activities.

Source protection measures do not protect all drinking water sources

The drinking water protection provided under the *CWA* is generally limited to drinking water systems within a source protection area. Most of the northern portion of the province, which includes many First Nations communities, does not fall within any source protection area. The *CWA* allows, but does not require, the Minister of the Environment to include watersheds outside of CA boundaries in the source protection planning process.

In addition, even within a source protection area, not all sources of drinking water are protected by the *CWA*. The *CWA* only mandates the protection of municipal residential drinking water systems; private drinking water wells are generally not protected under the *CWA*, unless a municipal council or the Minister of the Environment designates the private drinking water system for protection under the *CWA*.

Source protection prevails over other concerns

The *CWA* provides strong and clear direction that source protection requirements prevail over other planning concerns. In the 2005 Provincial Policy Statement (2005 PPS), the government took some initial steps to incorporate source water protection into land use planning. However, without source protection legislation, these provisions were largely ineffective. The *CWA* now more fully integrates source water protection into the land use planning process.

Under the *CWA*, municipal land use plans and decisions under the *Planning Act*, as well as prescribed instruments (such as certificates of approval), are required to conform with certain designated policies under the SP Plan, and to "have regard to" the other SP Plan policies. Indeed, existing official plans, zoning by-laws and prescribed instruments must be amended to conform to those designated policies. Further, the *CWA* includes detailed conflict provisions that generally provide that where there is a conflict between any Act, regulation, provincial plan, or the 2005 PPS and the *CWA* or a SP Plan, the provision that provides the greatest protection to the quality and quantity of water will prevail.

Application to existing activities and uses

While the *CWA* does provide greater clarity and coordination with respect to land use planning, the Act still presents some planning challenges. For example, both the prohibited and regulated activities provisions in the *CWA* may be applied to pre-existing activities. This concept of applying new provisions to pre-existing land uses is an unusual concept in municipal law that may present a challenge in the implementation stage of the SP Plans. Generally, new planning laws only apply to new activities, protecting pre-existing activities as legal non-conforming uses.

Public Participation & *EBR* Process

MOE provided extensive consultation opportunities over three years on the proposed *Clean Water Act*. MOE received 90 comments on the draft Act from a range of stakeholders. All commenters stated that they supported source water protection; however, not all of the commenters supported the proposed legislation. Many agricultural groups and individuals, as well as some industry associations and municipalities, expressed strong opposition to the proposed *CWA*, arguing that it was too restrictive, cumbersome and costly.

In contrast, numerous CAs, environmental groups and property owner associations, as well as many municipalities, expressed strong support for the proposed legislation, but nonetheless expressed concern that the legislation did not go far enough in some areas to protect source water. Nearly all commenters expressed concern about the need for sufficient long-term provincial funding for implementation of the SP Plans. (A detailed summary of all comments is provided on pages 46–49 in the Supplement to this Annual Report.)

ECO Comment

The *CWA* is a major step forward in Ontario's overall efforts to protect drinking water in the province. Protecting water from contamination at the source is a sensible approach to water management, which not only protects public health from the risks of drinking water contamination, but may also help safeguard the ecological integrity of aquatic ecosystems.

However, in a few areas, the *CWA* falls short of achieving its stated goal of protecting drinking water sources in Ontario. The *CWA* does not mandate that action be taken in all watersheds with municipal supplies across the province, but rather leaves it to the discretion of the Minister of the Environment to determine which watersheds outside the jurisdiction of the CAs will be afforded the protections provided in the *CWA*. In addition, the government has made a policy choice that source protection planning will only be required for municipal drinking water systems (with some limited exceptions), notwithstanding the fact that a considerable segment of the provincial population relies on private wells as a drinking water source.

Other important protections in the *CWA* are left to individual discretion. For example, despite the fact that the Great Lakes is an important drinking water source for almost three-quarters of all Ontarians living within the Great Lakes Basin, the *CWA* merely permits, rather than requires, the Minister of the Environment to establish mandatory targets for protecting the Great Lakes as a drinking water source. The ECO believes that the *CWA* should provide stronger, mandatory integration with other Great Lakes requirements.

The potential effectiveness of many of the source protection measures is difficult to assess at this time because important details, such as which activities may be prohibited or regulated, have yet to be prescribed in regulations. The breadth of activities that will be included in the regulations will have a major impact on the effectiveness of the source protection measures. For example, a potential benefit of the *CWA* is its ability to address cumulative impacts to drinking water sources from smaller and/or non-point source pollution sources (such as storm water systems and septic systems) that collectively pose a significant threat to drinking water. Most other environmental statutes, such as the *Environmental Protection Act* and the *Ontario Water Resources Act*, only regulate point sources from individual facilities.

The *CWA* poses significant challenges to the local bodies in the province – primarily the CAs and municipalities – which are charged with the responsibility and the costs of planning, implementing and enforcing the SP Plans. Without sufficient long-term funding, the ECO is concerned that the municipalities will not be able to adequately implement their SP Plans and successfully protect drinking water sources. The *Sustainable Water and Sewage Systems Act, 2002*, which would provide assistance by requiring cost recovery for drinking water services for municipalities, is still not in force five years after being passed. The ECO continues to encourage the government to move forward with this piece of legislation.

In addition to costs, the *CWA* poses other challenges for municipalities, such as applying prohibitions or restrictions to pre-existing uses, as well as addressing historical contamination that may pose a threat to drinking water.

Conversely, the *CWA* also provides municipalities with much-needed new powers. Many municipalities have been frustrated in the past by a lack of tools or authority to address threats to their own communities' drinking water sources. The *CWA* now gives municipalities the necessary authority to take action against such threats. The Act also provides municipalities with the added impetus to proceed with measures that they already had the authority to undertake, but simply may have chosen not to pursue. For example, a large number of municipalities have not yet developed or implemented sewer-use by-laws to address

industrial contaminant threats to drinking water sources. Importantly, the *CWA* also provides some clarity and certainty for municipal planning, providing clear direction that source water protection prevails over other planning concerns.

The government's policy decision to take a local approach to source protection is reasonable. However, it does not absolve the provincial government of its responsibility to provide strong, on-going technical, regulatory and financial support for source protection. The province should still play an important role in regulating specific, widespread threats to drinking water that apply across the province – such as abandoned wells and septic system failures.

In addition, MOE will have added responsibilities under the *CWA* in reviewing and amending prescribed instruments (such as certificates of approval and permits-to-take-water) to ensure that they comply with the SP Plans. This additional burden to MOE, which already lacks the necessary capacity to meet its mandated responsibilities, will be a challenge. Indeed, the level of on-going provincial funding and other resources provided to all public bodies responsible for administering the *CWA* will be a significant factor in the eventual success of this Act.

For ministry comments, see page 216.

The Whitefeather Forest and Adjacent Areas Community-Based Land Use Strategy

In June 2006, the Ministry of Natural Resources (MNR) adopted a land use strategy for the Whitefeather Forest and Adjacent Areas (WFAA) – a 1.3 million hectare area in the northern boreal forest used and occupied by the Pikangikum First Nation. The "Community-based Land Use Strategy for the Whitefeather Forest and Adjacent Areas" (the WFAA Strategy) is a guidance document that provides strategic direction for future land uses and resource management activities for this remote area in northern Ontario.

The WFAA Strategy is the first of 15 land use strategies intended to be developed using the policy and planning framework of the Northern Boreal Initiative (NBI) Community-Based Land Use Planning Process. The NBI was established by MNR in 2000 to enable the commercial development of the forests and other resources in the area to the north of the "Area of the Undertaking" (AOU), and to facilitate economic renewal, employment opportunities and resource stewardship for First Nation communities. (For a review of the NBI, see pages 91–95 of the ECO's 2002–2003 Annual Report.) Under the NBI planning process, each First Nation community within the NBI area leads the process for planning and developing a land use strategy for its respective region, with support and input from MNR and other provincial agencies.

The WFAA Strategy, developed by Pikangikum First Nation with the assistance of MNR, provides direction for future land use and resource development activities within the WFAA. The WFAA Strategy also identifies zoning areas within the WFAA and applies one of three main land use designations to these areas, as follows:

- Dedicated Protected Areas: areas (including waterways) that are set aside to protect special natural and cultural heritage features, and which prohibit commercial forestry, mineral sector activities, commercial electricity generation, aggregate extraction and peat extraction.
- General Use Areas: areas in which all land use activities are supported.
- Enhanced Management Areas: areas in which a wide range of uses (including commercial forestry and mining activities) may occur, but which include more detailed or area-specific land use direction to protect special interests or features, such as cultural and historic values, fish and wildlife habitat, and remoteness objectives. Enhanced Management Areas typically provide a gradient of uses between the more sensitive Designated Protected Areas and the General Use Areas.

The WFAA Strategy designates approximately 36 per cent of the total WFAA as Dedicated Protected Areas, 29 per cent as General Use Areas, and the remaining 35 per cent as Enhanced Management Areas. Accordingly, 64 per cent of the WFAA is open to at least some development.

Implications

Upon approval of the WFAA Strategy by both MNR and the First Nations, MNR immediately adopted the land use direction and area designations set out in the WFAA Strategy through a major amendment to the Crown Land Use Policy Atlas. The WFAA Strategy, as incorporated into provincial land use policy, creates zoning areas for Dedicated Protected Areas, General Use Areas and Enhanced Management Areas.

Designation of protected areas

In our 2002/2003 Annual Report, the ECO recommended that MNR "develop objectives and targets in order to establish a protected areas network for the NBI area as a whole." Protected areas serve a critical role in protecting species at risk, preserving ecologically significant features and maintaining biodiversity. The NBI area, which contains relatively unimpaired and intact ecosystems, provides a unique planning opportunity for creating a system of protected areas based on ecological principles.

Yet, unlike the extensive planning that was undertaken for the Ontario Living Legacy land use strategy for the AOU, there has not been any broad-scale land use planning or "gap analysis" for the NBI area. Without landscape-level guidance, such as objectives for the conservation of species at risk and biodiversity, the NBI's piecemeal planning approach misses the opportunity to create a regional system of protected areas for the entire NBI area that would best protect species at risk and conserve biodiversity.

Regulation of dedicated protected areas

The Dedicated Protected Areas designation is an interim designation only. The WFAA Strategy states that these areas are to be regulated under provincial legislation, but it does not provide any commitments regarding how or when these areas will be regulated.

If MNR does not regulate the Dedicated Protected Areas as either provincial parks or conservation reserves, there is no certainty that these areas will receive the level of protection provided by the *Provincial Parks and Conservation Reserves Act, 2006*. For example, without a regulated protected area designation, there is a risk that commercial forestry (and other activities) will not be legally prohibited in the Dedicated Protected Areas, even though that is the intent expressed in the WFAA Strategy.

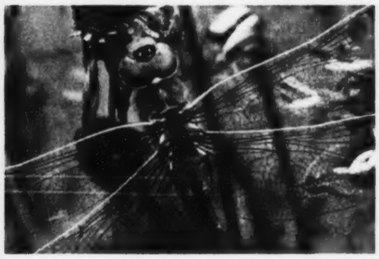
Woodland caribou

The WFAA Strategy sets out a number of measures designed to protect forest-dwelling woodland caribou, such as designating key habitat as protected areas and engaging in strategic access planning to maintain remoteness and habitat connectivity. While the proposed measures are laudable, they may not be sufficient. Woodland caribou have a very low tolerance for disturbances and require large protected areas to remain viable (see pages 75–81 of this Annual Report).

Forestry and other resource development

The WFAA Strategy does not, in itself, confer any new authority with respect to development in the WFAA. Before commercial forestry may proceed in the WFAA, MNR must seek either approval or exemption under the *Environmental Assessment Act (EAA)*. However, the WFAA Strategy does provide strong direction for the development of commercial forestry in the WFAA.

The WFAA Strategy suggests that a new sustainable approach to forestry will be applied in the WFAA. Yet, the WFAA Strategy does not provide any details regarding a new direction for forestry policy. To the contrary, in November 2006, MNR began to seek permission to proceed with forestry activities in the WFAA by means of a declaration order issued by MOE under the *EAA*, which MNR stated is to be modeled after the Declaration Order (MNR-71) for the AOU. If the *status quo* approach to forestry policy is applied in



the WFAA, there will likely be negative ecological impacts. Evidence suggests that the existing forestry guidelines and policies being applied in the AOU have not proven to be effective in mitigating the impacts on some ecological values, such as caribou.

Moreover, commercial forestry in the northern boreal – *if it is to be permitted at all* – requires different approaches than those employed in the south; this is due to the physical environment of the north, its harsh climate, shorter growing season, and lesser diversity of forest tree species. Unfortunately, despite past recommendations by both the federal Senate Subcommittee on the Boreal Forest and the ECO to assess forestry management approaches specific to the northern boreal, as of May 2007, no such assessment has yet been made public.

ECO Comment

Pikangikum's WFAA Strategy brings the provincial government one step closer to opening up Ontario's far north to commercial forestry and new levels of resource development. The introduction of new development in the NBI area – including forestry, mining, tourism, hydroelectric generation and new road construction – will likely have significant impacts on the fragile northern boreal forest. Given the potential implications of allowing these activities in the northern boreal forest, the ECO is extremely disappointed that MNR has not developed a broad, integrated land use planning system for the northern boreal as a region, prior to proceeding with the first of the NBI's community-based land use planning processes.

The ECO is also concerned that the commercial forestry guidelines for the AOU have been inappropriately applied to the WFAA, and may continue to be applied in subsequent steps. For example, the WFAA Strategy applied a one-kilometer forest harvesting buffer around most caribou calving lakes, which reflects current forestry policy in the AOU. Yet, recent studies have concluded that a surrounding buffer zone of intact forest of at least 13-kilometers in width is needed to maintain caribou on Ontario's northern boreal landscape. If MNR simply applies the forestry guidelines and policies developed for the AOU to the WFAA, significant environmental consequences and irreparable harm to species at risk may result.

In addition, the ECO is concerned about the failure of the WFAA Strategy to include specific steps or timelines for the regulation of the Dedicated Protected Areas. Without deadlines, these areas could retain this interim, unregulated designation for years. The ECO urges MNR to build on the substantial amount of consultation, planning and broad agreement accomplished during this process, and take immediate steps to regulate the Dedicated Protected Areas under the *Provincial Parks and Conservation Reserves Act, 2006*, to ensure that they receive the protection provided by this Act.

The WFAA Strategy espouses many commendable objectives. However, it will be a significant challenge to meet the competing objectives of economic renewal and increased employment on the one hand, and sustainability, biological conservation, stewardship of the land and remoteness objectives, on the other. With the inevitable tension between the goals for conservation and development, there is a strong need for clear and explicit rules governing planning in the north.

For ministry comments see page 219.

Interesting Instruments on the Registry

Instruments are legal documents that ministries issue to companies and individuals, granting them permission to undertake activities that may adversely affect the environment. Instruments include licences, orders, permits and certificates of approval.

Under the *Environmental Bill of Rights (EBR)*, certain ministries must classify instruments they issue into one of three classes, according to their environmental significance. The classification of an instrument determines whether a proposal will be posted on the Registry. It also determines the level of opportunity for public participation in the decision-making process (whether through making comments or by applying for appeals, reviews or investigations under the *EBR*).

Need to classify certain instruments issued by MNR

Under the new *Endangered Species Act*, the Minister of Natural Resources has the authority to issue permits authorizing otherwise prohibited activities, such as killing species at risk or destroying their habitats. The ECO urges MNR to classify these instruments under the *EBR* prior to the law being proclaimed into force. The ECO believes that such classification is important in order that the public be accorded the right to comment on individual instruments and seek leave to appeal before the Environmental Review Tribunal (ERT). For further discussion of the *Endangered Species Act*, see page 96 of this Annual Report.

Since April 2003, there have been four applications for reviews requesting MNR to review its roster of instrument classifications and to classify additional instruments, including Niagara Escarpment Development permits. The ECO disagrees with MNR's decision to deny each request. For further information on this application, see page 226 of the Supplement.

Waste Pelletization – Approval for a New and Controversial Plant

Decisions on many thousands of instruments are posted on the Registry each year. The ECO usually selects one or more instruments from this large group for a detailed review, and this year we selected an approval for a waste pelletization plant.

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In May 2005, Dongara Pellet Factory Inc. (referred to hereafter as "Dongara" or "the proponent") applied to the Ministry of the Environment (MOE) for the construction and operation of a 3.5 hectare enclosed waste processing facility that included a pelletization plant and a Blue Box materials sorting and transfer facility. The proponent requested that MOE grant a Certificate of Approval (C of A) under s.27 of the *Environmental Protection Act (EPA)* allowing for the construction and operation of the facility. The plant, situated in the City of Vaughan, would be used for the processing of 548–800 tonnes of residential waste per day to make EnerPax alternate fuel pellets.

Dongara states that its facility aims to reduce the volume and weight of municipal waste presently being disposed in landfills. Recyclables and hazardous materials are separated from other wastes in the pellet production process and transferred to the appropriate facilities. Dongara contends that the pellet contains lower amounts of harmful compounds and is a cleaner alternate fuel that can replace coal or coke.

In August 2005, Dongara also applied for a C of A under s.9 of the *EPA* for emissions associated with the building housing the waste pelletizing process, natural gas-fired heating equipment and an emergency diesel generator.

Both Cs of A were issued on August 29, 2006, and included conditions to address fugitive odours, truck traffic and other nuisances.

Public participation in application & EBR process

Both proposals were posted on the Environmental Registry for a 30-day comment period (Registry #IA05E0806 and #IA05E1272). The proponent, in support of its proposal, provided a two-page description in the proposal notice of the pelletization operation, the safeguards in place and the environmental benefits that could be attained.

Dongara conducted a public consultation meeting at a conference centre in Woodbridge on the Class II Instrument proposal. As a result, the facility's neighbours filed five written comments in May 2005. An additional comment was sent by the lawyers for a cemetery located opposite the Dongara site in June 2005, in response to the registry posting. The letter outlined preliminary concerns and requested additional information and time to fully comment on the proposal.

The commenters expressed concerns over foul odours, noise, visual impact, the effect on surrounding property values and business ventures, increased truck traffic and the lack of information on the projects and its impacts. Two commenters withdrew their objections after meeting with the proponent, reviewing the plant's trucking plans and receiving assurances that composting would not occur on-site.

In September 2005, the lawyers for the cemetery submitted detailed comments relating to both proposals. The comments note that the cemetery is expected to be "a place of peace and tranquility, free from objectionable nuisances," and that potential nuisance odours would detrimentally impact its cemetery and mausoleum. The comments suggested that the Cs of A include conditions requiring the maintenance of negative pressure between the interior and exterior of the building, as well as safeguards to minimize the potential for fugitive odours or loss of negative pressure. They also suggested that the facility only serve areas with source-separated organics programs.

In its decision notices, MOE stated that the concerns raised by the commenters were consistent with concerns of the ministry and, as a result, terms and conditions were added to the Cs of A. The concerns were addressed by ensuring that: the facilities would be kept under negative pressure with the exhaust passing through a biofilter before it is released; wastes would be stored indoors; composting would not occur at the facility; and trucks would be restricted to certain hours of operation. MOE also included odour monitoring and complaints response procedures in the Cs of A (whereby nuisances can be reported and the proponent is required to respond).

Concerns raised over use of EnerPax pellets

Some environmental groups have raised concerns over the use of EnerPax pellets as an alternate fuel source. In November 2006, MOE posted a proposal notice for a regulation that will exempt all users of EnerPax from the mandatory hearing requirements under s.30 of the *EPA* (Registry #RA06E0016). This was prompted by Arbour Power, in consultation with the Town of Ajax, proposing to construct and operate a gasification facility that would use EnerPax waste pellets. Dongara and Arbour Power requested that the facility be exempted from the s.30 mandatory hearing requirements under the *EPA*. Dongara submitted that the s.32 discretionary hearing provision permits a site-specific assessment to determine if a hearing is required. Arbour Power also requested that its proposed facility be exempted from preparing an individual environmental assessment as required by the *Environmental Assessment Act (EAA)*.

In September 2007, MOE advised that due to the lack of support for their proposals and the creation of the new Waste Management Projects regulation under the *EAA*, Dongara and Arbour Power have withdrawn their proposals relating to the use of the waste pellets.

In addition, environmental and citizen groups are appealing MOE's decision to allow Lafarge Canada Inc. to burn tires and EnerPax pellets at its cement plant in Bath, Ontario. The leave to appeal application is discussed on page 191 of this Annual Report.

ECO comment

The ECO commends MOE for addressing the concerns raised by the commenters in its decisions on the two Cs of A issued for the Dongara Pellet Factory. In issuing the Cs of A, MOE emphasized that the proponent had a responsibility to ensure it operates the site in a manner that does not result in nuisances or health and safety hazards to local residents and businesses. The complaints response procedures are positive and intended to ensure most complaints are resolved effectively and quickly. MOE and the proponent are also commended for providing a detailed description of the pellet facility operation in the s.27 proposal notice.

The safety of pelletized waste products needs to be studied further before changes are made to the legislative safeguards in place. The ECO intends to monitor the ERT hearings on the appeal from MOE's decision to permit Lafarge Canada Inc. to burn EnerPax waste pellets and tires in its cement kiln in Bath.

For ministry comments see page 217.

More Decisions of Interest

Space does not permit all environmentally significant decisions reviewed by ECO to be summarized in this section of the Annual Report. Readers may also wish to refer to the following reviews of ministry decisions in the Supplement to this year's Annual Report:

Dissolved Oxygen Criteria for the Protection of Lake Trout Habitat

MNR has developed a multi-component Lake Trout Strategy to respond to a decline in inland lake trout populations in Ontario. One of the Strategy's components is a "uniform standard dissolved oxygen criterion to determine development capacity on inland lake trout lakes on the Precambrian Shield for use by MNR field staff and municipalities." In the Supplement (pages 93 to 99), ECO discusses the role of the new criterion in lakeshore capacity planning, and identifies gaps (such as the need for implementation guidelines for the new criterion).

Drinking Water Standard for Trichloroethylene (TCE)

Some water supplies in Ontario have historically been contaminated with TCE. Once widely-used in various industrial applications, TCE has both acute and chronic toxic effects and is classified as a probable human carcinogen. MOE has recently tightened the TCE criterion for drinking water. In the Supplement (pages 51 to 54), ECO discusses the context and history of this MOE policy decision.

part 4

applications for review and investigation

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environmental commissioner of ontario

Under the *EBR*, Ontario residents can ask government ministries to review an existing policy, law, regulation or instrument (such as a certificate of approval or permit) if they feel that the environment is not being protected. Residents can also request ministries to review the need for a new law, regulation or policy. Such requests are called applications for review.

Ontario residents can also ask ministries to investigate alleged contraventions of specific environmental laws, regulations and instruments. These are called applications for investigation. Applications for investigation may be filed under 17 different statutes that are prescribed under the *EBR*, including the *Fish and Wildlife Conservation Act (FWCA)*, the *Environmental Protection Act (EPA)*, and the *Crown Forest Sustainability Act (CFSA)*.

The ECO's Role in Applications

Applications for review or investigation are first submitted to the Environmental Commissioner of Ontario, where they are reviewed for completeness. Once ECO staff members have decided that a particular application meets the requirements of the *EBR*, the ECO forwards it to the appropriate ministry. The ministry then decides whether it will conduct the requested review or investigation, or whether it will deny the request. The ECO reviews and reports on the handling and disposition of applications by ministries. The issues raised by the applications are an indication of the types of environmental concerns held by members of the public; on occasion, the ECO conducts research on a concern raised in an application for review or investigation.

Five ministries are required to respond to both applications for review and applications for investigation:

- the Ministry of the Environment (MOE);
- the Ministry of Energy (ENG);
- the Ministry of Natural Resources (MNR);
- the Ministry of Northern Development and Mines (MNDM); and
- the Technical Standards and Safety Authority (TSSA) of the Ministry of Government Services.

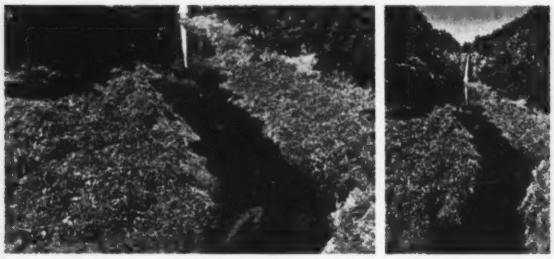
Two ministries are required to respond to applications for review only:

- the Ministry of Agriculture, Food and Rural Affairs (OMAFRA); and
- the Ministry of Municipal Affairs and Housing (MMAH).

In the 2006/2007 reporting year, the ECO reviewed 30 applications for review and 10 applications for investigation. Individual applications for review and investigation received by ECO may be forwarded to more than one ministry if the subject matter is relevant to multiple ministries, or if the applicants allege that Acts, regulations or instruments administered by multiple ministries have been contravened. Of these 40 applications, the ministries concluded that a review or an investigation was not warranted in all but six cases. In many cases, the ECO disagrees with the decision to turn down an application and believes that the issues raised by the applicants did merit a review or an investigation.

In several cases in this past reporting year, a ministry that denied an application did, in fact, conduct inspections or appeared to undertake an investigation outside of the purview of the *EBR*. The ECO is concerned that this approach deprives the applicants and the public of an important transparency provision that is a feature of the *EBR*: namely, the ECO's review and reporting of how the matter was handled by the ministry.

The ECO's detailed reviews of applications for review and investigation are found in Sections 5 and 6 of the Supplement. In the following pages, brief summaries of selected applications handled by ministries during this reporting period are provided.



Excessive Delays in Responding to *EBR* Applications by MOE

The ECO is concerned that MOE's failure to provide timely decisions on a significant number of *EBR* applications in the past few years is becoming a systemic problem on the part of the ministry. The law is very clear that a decision on whether or not to conduct an application for review must be made by a prescribed ministry within 60 days upon it receiving the application from the ECO. In one recent example, MOE was approximately a year late in responding to an application that it ultimately turned down. As noted in our 2005/2006 Annual Report, such "excessive delays frustrate the public interest and undermine the *EBR*." Exceeding the 60-day deadline for responding to applications is unacceptable.

MNR's Refusal to Classify Additional Instruments Under the *EBR*

MNR was asked this year to review its instrument classification regulation, which identifies those approvals, licences and permits which are subject to *EBR* provisions (such as notification on the Environmental Registry). The applicants requested that MNR classify development permits under the *Niagara Escarpment Planning and Development Act (NEPDA)* to improve public consultation on those decisions. MNR turned down the application for review.

This is the fourth application since 2003 that has requested MNR review its instrument classification regime and classify additional instruments. In all four cases, MNR turned down the request, and the ECO has taken the position that the reviews should have been done. The ECO is extremely disappointed with MNR's resistance to the added transparency measures contained in the *EBR*. The ECO urges MNR to review its instrument classification regulation and amend it to include additional instruments under *NEPDA* and the *Crown Forest Sustainability Act*. For a detailed review of the application dealing with the *NEDPA*, see pages 226 to 229 of the Supplement to this Annual Report.

Road Salt: Can Ice-Free Roads and Environmental Protection be Reconciled?

In January 2006, RiverSides Stewardship Alliance and Sierra Legal Defence Fund submitted an Application for Review of Regulation 339, R.R.O 1990, under the *Environmental Protection Act (EPA)*. Regulation 339, Classes Of Contaminants – Exemptions, which exempts any substance used by a road authority for the purpose of highway safety in snow or ice conditions, even if it may be considered a contaminant under the Act. If the regulation were repealed, roads salts would be subject to regulatory oversight, such as Certificates of Approval, pollution prevention and abatement orders, and prosecutions.

Regulation 339 conflicts with the *Ontario Water Resources Act*, which does not exempt road salts from its provisions. Section 30 of the Act makes it an offence for a person to discharge any material into any waters that may impair water quality.

It is estimated that two million tonnes of road salts are spread in Ontario annually. The urbanization of Ontario, increased road densities and bare pavement policies have led to increases in the tonnage used and application rates of road salts since the 1970s.

The upward trend of road salts usage – as well as the ensuing runoff from roadways, salt storage yards and snow disposal sites – have contributed to elevated chloride levels in surface water, soil and groundwater in Ontario. Approximately 30 to 45 per cent of all chlorides present in the Great Lakes are a result of winter road salts application. Road salts can contaminate aquifers and compromise drinking water quality for communities relying on well water. Road salts also contaminate soils and damage terrestrial ecosystems.

Road salts accelerate the corrosion of roads, bridges, sidewalks, parking lots and vehicles, which necessitates increased monitoring, maintenance and expensive repairs. Environment Canada estimated the cost of repairing a damaged bridge deck averaged $736 per square metre per year, and repairs to structural elements of bridges range from $125 million to $325 million annually.

Concerns about the environmental effects of road salts were noted by MOE in 1975, when it released its Guidelines for Snow Disposal and De-icing Operations in Ontario, which recommends the amount of chlorides released into the environment be kept to a minimum. Several other, more recent reports, including the Report of the Walkerton Inquiry, also have advocated for the restricted use of road salts because of their harmful impacts.

In December 2001, a report by Environment Canada and Health Canada proposed that road salts be considered "toxic" and added to the List of Toxic Substances in Schedule 1 under the *Canadian Environmental Protection Act, 1999*. This has yet to happen. After the report's release, the Code of Practice for the

Environmental Management of Road Salts (Code of Practice) was released in April 2004, following a two-year stakeholder consultation process. It is a voluntary salt management program for road authorities using more than 500 tonnes/yr of road salts or applying salts near vulnerable ecosystems.

Since Regulation 339 was passed in 1972, it has not been amended. The public did not have an opportunity to comment on the exemption when it was conceived. The applicants called for Regulation 339 to be revoked and replaced with a phased-in mandatory road salts management regime, requiring every road authority to seek a Certificate of Approval issued on a watershed basis. They also proposed additional regulations that would set targets for road salts reduction, establish monitoring and reporting practices, and set penalties to ensure compliance.

Ministry Response

In late December 2006, MOE denied the applicants' request for review, although it acknowledged the environmental harm attributed to road salts. MOE contended that it had a comprehensive list of initiatives that adequately addressed the concerns raised in the application. The ministry explained that it participated in Environment Canada's 1999/2000 review, and no new information had emerged since then. In addition, MOE argued the province had an obligation to ensure public safety on roads and highways, and cost-effective de-icing alternatives to road salts were not available.

MOE stated it had the authority to issue Certificates of Approvals for approximately 30 per cent of salt storage domes, and to investigate and prosecute improper storage or transport practices. MOE also stated that it maintained tributary, surface water and groundwater monitoring networks that recorded chloride levels in these water resources. The ministry also described how more than 200 municipalities in Ontario have notified Environment Canada that they intend to prepare or have already implemented a salt management plan and best management practices under the Code of Practice.

The ministry assured the applicants that they would be informed if "any abrupt change or unexpected circumstance" occurred that required MOE to take action. No further commitments were made by MOE.

MOE's notice of decision did not include any discussion of the Ontario Ministry of Transportation (MTO) and its salt management initiatives. MTO has implemented best practices in storage and application processes and employs a number of up-to-date winter maintenance technologies.

ECO Comment

The ECO disagrees with MOE's decision to deny this request for review. The initiatives referenced by MOE did not constitute a public review of Regulation 339, or address the concerns raised in the application. The recommendations put forth by the applicants to reduce Ontario's dependency on road salts were not given serious consideration by the MOE. The ministry did not commit itself to examine the recommendations or undertake additional efforts to reduce the use of road salts in the province.

The ECO is troubled by MOE's eight-month delay in releasing its decision, despite repeated inquiries by the applicants and the ECO to MOE about the long-passed deadline. Such delays frustrate the public interest, undermine the *EBR*, and hamper the ability of the ECO to report to the Legislative Assembly. MOE did not provide an explanation for the delay and the reasons given for denying the request were not reflective of this extended time. No analysis was provided on the feasibility of rescinding the regulation or the potential consequences flowing from such action. While MOE stated it had the authority to issue Certificate of Approvals for approximately 30 per cent of salt storage domes, it did not discuss whether any storage domes have been investigated or prosecuted for improper storage or transport of salt.

In declining the review, MOE did not demonstrate to the ECO's satisfaction that there was no potential for significant environmental harm. The environmental impacts of roads salts are well documented and the situation could worsen if the upward trend of road salts usage continues. In the ECO's view, the road salts initiatives cited by MOE will not mitigate the damage caused by road salts.

Although the ministry has recognized the environmental harm caused by road salts since the mid-1970s, Regulation 339 has never undergone public review or revision. In a 1995 internal regulatory review for Regulation 339, MOE stated "... this regulation is in direct conflict with the Ministry's mandate and objectives because it allows for a contaminant to be widely distributed to the natural environment resulting in substantial chronic contamination." MOE's internal review demonstrated that there have been long-standing concerns within the ministry about the environmental impacts of road salts, and that regulatory options, such as mandatory operator training, were under consideration.

The ministry's decision to maintain the status quo contradicts its obligation to protect the province's water resources and could undermine the legislative objectives of the recently adopted *Clean Water Act*. MOE appears satisfied in allowing municipalities and other salt users to implement plans voluntarily without direction from the ministry. The ECO does not consider it appropriate for the ministry to wait

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until an "abrupt change or unexpected circumstance" occurs before acting on this issue. Remedying the environmental effects of roads salts will be very difficult and costly in the long run. Preventing on-going damage should be a priority for MOE.

The applicants did not want the ministry to conduct another road salts study. Instead, they wanted MOE to review the need to implement recommendations from existing studies. Several municipalities are currently realizing the environmental, economic and health benefits of implementing a road salt minimization strategy. Provincial guidelines that mandate best management practices would assist other municipalities and large salt users to design a salt management plan suited to their geography, roads and water conservation area.

All factors considered, MOE should have approved the request to review Regulation 339. The ECO urges MOE to develop a comprehensive, mandatory, province-wide road salts management strategy to ensure aquatic and terrestrial ecosystems are protected from chlorides. As part of this strategy, MOE, in consultation with MTO and municipalities, should examine rescinding the regulation and assessing regulatory options for instituting best management practices, the use of salt alternatives and other technological advancements. Furthermore, consultations should also consider the widespread adoption of the MTO's best practices for the storage, transport and application of road salts.

(For a more detailed review of this application, see the Supplement to this report, pages 135–141.)

For ministry comments see page 217.

| RECOMMENDATION 7 |

The ECO recommends that MOE develop a comprehensive, mandatory, province-wide road salts management strategy to ensure aquatic and terrestrial ecosystems are protected from chlorides.

Our Cratered Landscape: Can Pits and Quarries be Rehabilitated?

In November 2003, the ECO received an application arguing that Ontario's pits and quarries are not being adequately rehabilitated by the aggregate industry, and requesting a review of relevant sections of the *Aggregate Resources Act (ARA)*. The applicants estimated that between 1992 and 2001, approximately 6,000 hectares were dug up to extract aggregates – without the rehabilitation required under the *ARA*. They asserted that this pattern would continue, unless rules were tightened.

The applicants also noted that an estimated 6,500 aggregate sites had been abandoned (excavated without rehabilitation) as of 1990. Since industry had, on average, rehabilitated only 13 such sites per year, the applicants estimated that it could take 489 years to get through the backlog.

The high cost of rehabilitating worked-out pits and quarries – an estimated average cost of $12,495 per hectare – was also raised by the applicants. They suggested that Ontario's total rehabilitation costs could amount to $74 million per decade, and asked, rhetorically, "When will this rehabilitation take place? Who will pay for it? Will this rate of deficit continue in the future?" In the past, rehabilitation security deposits had been used by the province to guarantee rehabilitation work; but the Ontario government dismantled this system in the late 1990s, and returned approximately $49 million directly to aggregate operators. The applicants argued that this left little incentive for operators to carry out rehabilitation, and proposed a return to an "effective system of rewards and punishments so that rehabilitation actually occurs." Additional issues raised by the applicants are described in the Supplement to this Annual Report, page 186, along with more detail on the ministry's response and commitments.

Regulators and the industry have long recognized that aggregate operators should not leave an ever-growing legacy of abandoned pits and quarries pockmarking the landscape. Abandoned aggregate operations provide little natural habitat, regenerate only very slowly, and can be prone to serious erosion. In some cases, their steep-sided slopes may pose safety hazards, and they may also act as easy conduits for contaminants (such as road salt or fuels) to leak into underground aquifers.

Ontario has required the rehabilitation of pits and quarries since 1971, when the Ontario legislature enacted the *Pits and Quarries Control Act (PQCA)*. But the *PQCA* was soon deemed to be ineffective. New rules were finally brought into force with the proclamation of the *Aggregate Resources Act (ARA)* in 1990. The Minister of Natural Resources at the time stated, "The new Act puts more emphasis on environmental concerns and aggressively promotes the rehabilitation of pits and quarries located on private land. ... Better site plans, better operating records and better rehabilitation will be required."

Unfortunately, MNR grandparented all existing licences and permits when the *ARA* came into force, so that their site plans still reflected the weak rules of the old *PQCA*. This remains a problem to this day, since licences (on private lands) are issued in perpetuity, and the vast majority of licences in the GTA are over 30 years old. MNR can require licensees to amend their site plans, but licensees can appeal to the Ontario Municipal Board.

By 1990, thousands of worked-out pits and quarries had been abandoned, either because their licences pre-dated rehabilitation requirements or because operators found it cheaper to forfeit the small security deposits. To deal with this legacy, the *ARA* created a separate fund – under the Management of Abandoned Aggregate Properties (MAAP) program – with a levy set at a rate of 0.5 cent/tonne on extracted aggregate.

MNR estimated in 1989 that "this fund could permit the rehabilitation of most abandoned pits in the designated areas within 12–15 years." The MAAP fund was initially administered by MNR directly.

In 1997, MNR transferred the MAAP program to the aggregate industry association, as part of larger campaign of regulatory reform and government cost-cutting. A few broad goals were set at the time of transfer: to rehabilitate abandoned pits and quarries; to carry out research, including rehabilitation research; and to gather and publish information. The MAAP program has also established its own criteria for choosing sites that warrant rehabilitation. The rehabilitation work is carried out at no cost to the landowner and, after rehabilitation, the lands remain in private hands. As of 2005, a total of 366 hectares have been rehabilitated under the MAAP program, at a total cost of over $4 million.

Ministry Response to Request for Review

In January 2004, MNR agreed to undertake the requested review. The completed review (released in August 2006) acknowledged significant weaknesses in the oversight of Ontario's sand and gravel resources. The ministry "committed to a long term strategic approach to improving the Aggregate Resources Program and rehabilitation of aggregate sites." Among other things, MNR agreed that: inadequate rehabilitation is widespread; that the ministry's weak database makes oversight of rehabilitation difficult; and that the overall aggregate program faces significant staffing and funding challenges. The ministry promised to make rehabilitation a greater priority in its compliance work, and to examine the merits of a rehabilitation incentive system by August 2008. However, the ministry also concluded that the fundamental principles of the *ARA* are adequate to ensure rehabilitation, and that the Act also provides MNR with adequate enforcement tools. MNR did acknowledge the large number of abandoned sites (approximately 6,900), but did not propose a solution. MNR confirmed that the industry's MAAP program was rehabilitating only 10 to 20 such sites per year, though increasing this target to 30 sites for 2005.

Recent Progress by MNR

In June 2006, MNR amended the *ARA* to impose new reporting requirements on operators, and to give new powers to ministry inspectors. MNR also finalized its overhaul of the Manual Policies and Procedures under the *ARA*, including updated policies for rehabilitation and enforcement (for details, see page 79 of the Supplement and page 113 of the Annual Report).

In October 2006, MNR expanded the geographic scope of the *ARA* to include more parts of central and Northern Ontario, and also increased the fees and royalties that aggregate operators must pay, effective January 1, 2007. MNR stated that the extra revenue would go towards enhancing rehabilitation, as well as strengthening compliance by hiring additional enforcement officers. MNR also introduced stricter rehabilitation rules in the Greenbelt Plan area, bolstered by area targets and timelines. Most aggregate operations in the subject area will require site plan amendments for rehabilitation in order to comply with the new rules.

ECO Comment

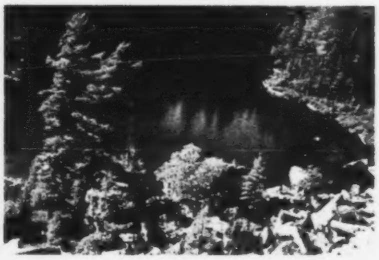
This review demonstrates that the *EBR* application process is an effective way to convey public concerns to the responsible ministry, and can trigger policy and operational improvements within ministries. To the ministry's credit, MNR carefully evaluated the underlying issues, acknowledged a number of structural weaknesses and undertook some immediate improvements to improve rehabilitation rates. The ministry also made numerous commitments to work towards longer-term improvements – commitments that can now be tracked by the public and the ECO.

Barrier to rehabilitation #1: Inadequate legislation

The aggregate industry's poor rehabilitation record has been a long-standing and frustrating concern for citizens, for MNR and for industry alike. Improvements over the decades have come at a glacial pace. There were hopes that the *ARA*, proclaimed 17 years ago, would resolve both the on-going rehabilitation problems and the legacy of abandoned sites. Clearly, neither has happened. Although MNR concluded that the legislation itself is fundamentally sound, the fact that the ministry saw the need to create more stringent rules for the Greenbelt Plan area suggests the need for clearer targets and timelines for rehabilitation incorporated into the *ARA*.

Barrier to rehabilitation #2: Grandparented licences

One key barrier to adequate rehabilitation is the large number of old licences that were grandparented when the *ARA* was enacted, effectively shielding them from rehabilitation requirements, and forcing ministry staff to use time-consuming site plan amendments on a case-by-case basis. These site plan amendments can be stalled by appeals to the Ontario Municipal Board, adding further challenges for MNR's over-extended aggregate staff.



Barrier to rehabilitation #3: Inadequate resources at MNR

MNR senior mangers were warned of severe staffing shortages in the ministry's aggregate program in spring 2001 – at least two-and-a-half years before this *EBR* application was submitted. Overall, the ministry has been struggling with inadequate resources for managing many of its mandated responsibilities and programs, as described in the ECO Special Report "Doing Less with Less" released in April 2007.

Unfortunately, most new staff hired by MNR in spring 2007 will be assigned to Northern Ontario, and will not be available to resolve the very serious inspector shortages in the South Central Region, where the bulk of Ontario's aggregate is extracted and where vaguely written, outdated site plans are wide-spread. Of the many recommendations MNR assembled as a result of this review, Recommendation #18 seems especially pertinent: "MNR will immediately undertake an assessment of its capacity for monitoring and enforcement including ensuring the rehabilitation of sites." The ECO encourages MNR to complete this assessment, make it public and respond with a goal of building its field capacity.

Strengthening MAAP

The MAAP program is currently privately operated, but it exists by virtue of legislation administered by MNR, and it was MNR's responsibility to set goals, targets and timelines when it handed the program over in 1997. The ECO suggests that a fresh look at the MAAP program would be timely, beginning with a re-evaluation of the geographic scope and environmental significance of abandoned pits and quarries on private lands. What types of sites are in greatest need of being rehabilitated, and how can landowners be brought on board? What types of sites are best left to regenerate naturally? What should the scope and end-point of the program be? These are questions that deserve broad public consultation. Among other things, the program requires measurable objectives and timelines reflecting current priorities for MNR and society, which might include protecting biodiversity, habitat connectivity and source waters.

Excessively delayed review

MNR's review of this application was very protracted, requiring two-and-a-half years. The applicants found this lengthy waiting period very frustrating, and submitted a Freedom of Information (FOI) request

to MNR in March 2006 requesting full documentation about the status of their application. The released documents demonstrate clearly that MNR had completed the substantive part of its review by February 2005. A set timeline for ministries to conduct reviews is not stipulated under the *EBR*, but the legislation does state that ministers "shall conduct the review within a reasonable time." MNR demonstrably failed to comply with this "reasonable time" requirement of the *EBR*.

Now that the challenges facing the ministry's aggregates program have been shared with the public, the ECO hopes that future discussions on program and policy direction will take place in the broader public arena, involving the full range of stakeholders. The ECO is encouraged by MNR's commitment to improving the Aggregate Resources Program and rehabilitation rates, and will continue to monitor and report on MNR's progress.

For ministry comments see page 217.

| RECOMMENDATION 8 |

The ECO recommends that MNR improve the rehabilitation rates of Ontario pits and quarries by introducing stronger legislation with targets and timelines; by applying up-to-date rules to grandparented licences, and by further strengthening the ministry's own field capacity for inspections.

Review of the Regulatory Framework for Sewage Biosolids

For over 25 years, municipal sewage biosolids have been applied to farmland for the purpose of enhancing crop growth. Farmers have also benefited because the use of biosolids reduces their reliance on more costly fertilizers, while the practice offers municipalities a convenient and cost effective means of disposing of this end product of the sewage treatment process. However, ongoing concerns about the public health and environmental effects of biosolids application have not been quelled as yet; in addition, operational challenges, such as the increasing shortage of suitable farmland, have arisen.

Background

Municipal sewage treatment plants (STPs) treat sewage from residences and other sources (including industry under sewer use by-laws) to produce a liquid effluent and sewage sludge. Comprised mostly of water, sewage sludge also contains organic material and microbes, such as protozoa, rotifers, bacteria, viruses and parasites. Sewage sludge is treated to reduce its odour and the concentration of pathogens, including *E. coli* and other bacteria, viruses and parasites that could cause human and wildlife diseases. The resulting product, called sewage biosolids, contains nitrogen, phosphorus, potassium and micro-nutrients, and can be used as a fertilizer and soil conditioner. According to studies reviewed by MOE, it is unlikely that stabilized sewage biosolids applied according to the guidelines may still contain sufficient concentrations of pathogens to cause disease and produce unacceptable odours.

Since 1993, the U.S. Environmental Protection Agency (EPA) has recognized two classes of pathogenicity, called A and B, in sewage biosolids. Under the U.S. EPA regulation – Title 40 of the Code of Federal Regulations, Part 503, Subpart D – Class A biosolids must not have detectable levels of fecal coliforms and some other pathogens. Class A biosolids can be applied to all types of land, including lawns and home gardens. Class B biosolids are of lower quality since they have detectable levels of pathogens. They can be applied to farmland, but not to lawns and home gardens due to safety concerns.

In 2004, the Ministry of the Environment (MOE) released the draft "Guide for the Beneficial Use of Non-Agricultural Source Materials on Agricultural Land" replacing the 1996 guidelines for the application of biosolids. Both guidelines define quality criteria and land application requirements for sewage biosolids, which are similar to the U.S. EPA's Class B requirements, and are intended to reduce the risks related to pathogens and odour.

Disposal of sewage biosolids

Currently, large quantities of Ontario's sewage biosolids are deposited in landfill sites; however, odour complaints and declining landfill capacity are making this disposal option less attractive. For example, Toronto and Windsor shipped sewage biosolids to Michigan, due in part to a lack of suitable farmland and landfill space in Ontario. In the summer of 2006, the State of Michigan ordered the shipments stopped due to odour complaints. Several municipal STPs incinerate sewage sludge, including the Duffin Creek Water Purification Control Plant (York/Durham Regions), City of London, and Highland Creek WPCP (City of Toronto).

Environmental Protection Act *and* Nutrient Management Act

Under the *Environmental Protection Act (EPA)* and Regulation 347 (RRO 1990), sewage biosolids are regulated as a waste and approvals for their disposal are obtained from MOE. Haulers of sewage biosolids are required to obtain a waste management system Certificate of Approval (C of A), and landfill site owners are required to obtain a C of A for their waste disposal sites. If sewage biosolids are to be spread on farmland as a nutrient, a five-year Organic Soil Conditioning Site C of A must be obtained from MOE for the site, and approval is required from the Ministry of Agriculture, Food and Rural Affairs (OMAFRA) under the *Nutrient Management Act (NMA)* and O. Reg. 267/03 if the farm has been phased into the requirements of the regulation. If sewage sludge is to be incinerated or used as a fuel source to generate electricity, a C of A for air emissions is required, and approval under the *Environmental Assessment Act (EAA)* may also be required. (For additional information about *EAA* requirements, refer to notice RA06E0008 on the Registry.)

Summary of Issues

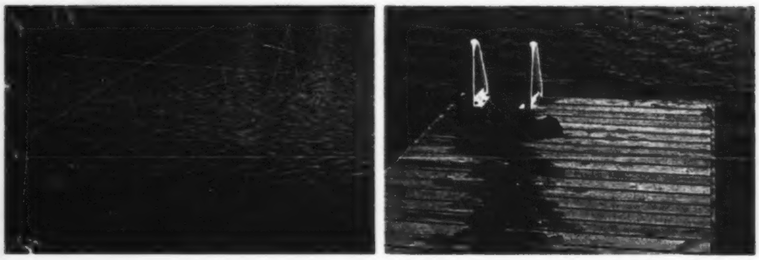
In June 2006, applicants requested a review of the existing sewage biosolids regulatory framework and the need for a new regulation "in view of better technologies available to tackle environmental hazards associated with the biosolids application to agricultural land." According to the applicants, Lystek International Inc. (Waterloo, ON) has developed a treatment technology that will produce stable "pathogen-free" sewage biosolids that are consistent with the U.S. EPA's Class A biosolids requirements, meet land application requirements, and can be stored for a year without re-growth of pathogens.

According to the applicants, the technology has been successfully tested at the Guelph municipal STP and "represents a proactive step towards meeting the future challenges of beneficial biosolids reuse in an environmentally responsible manner." The applicants have requested that the regulatory framework for sewage biosolids management be enhanced to recognize the benefits that improvements in the quality of sewage biosolids and stabilization can provide to the environment and to society.

The ECO forwarded the application to MOE and OMAFRA.

Ministry Response

MOE denied the applicants' request for review, explaining that, since the decision to pass O. Reg. 267/03 was made within the last five years, MOE was not required to accept this application. MOE also explained that there was no requirement to accept the application since "the potential for harm to the environment is low based on the current regulatory standards associated with the management of this material." MOE noted that it has been approving biosolids land applications for 25 years without any documented health or environmental impacts when standards are followed.



MOE advised the applicants that it was already reviewing the regulatory framework for sewage biosolids and that future revisions would "retain the necessary environmental controls for the management of this material." MOE suggested that the applicants monitor the Registry for future proposals and provide comments at such time as proposals are posted.

OMAFRA also denied the applicants' request for review, stating that it agreed with MOE. Neither ministry gave any indication that it plans to introduce a sewage biosolids classification system.

ECO Comment

MOE and OMAFRA were not justified in denying this application for two reasons. First, none of their decisions in the last five years regarding sewage biosolids included consideration of a "pathogen-free" sewage biosolids product. In addition, current proposals – the review of the regulatory framework for land application of sewage biosolids and the 2004 draft Guide – don't include consideration of or accommodation for a Class A sewage biosolids product.

Second, there is social, economic and scientific evidence that it was in the public's interest to undertake this review. Despite MOE's and OMAFRA's assertion that sewage biosolids are safe, many members of the public, as well as some farmers and municipalities, are not convinced. In fact, some U.S. jurisdictions have attempted to ban the practice and have had the ban overturned by the courts. In Ontario, municipalities have lost access to farmland application sites and farmers to an inexpensive source of nutrients because of quality/odour concerns. The issue of land application of sewage biosolids has divided communities, pitting neighbour against neighbour. Increasingly, municipalities have only two disposal options: landfilling or incineration, both of which have met with resistance from the public. The ECO believes that MOE and OMAFRA should have agreed to develop quality standards that are similar to the U.S. EPA's Class A standards and would result in a stable "pathogen-free" product. Such standards would improve confidence in the product among farmers and their neighbours and, thus, provide greater access to much needed farmland. This application illustrates how the development and implementation of innovative waste management technology can be hampered when government fails to set a clear direction and update requirements in a timely manner.

In June 2007, MOE posted a proposed policy statement that would require municipalities to prepare waste management plans including plans for the management of sewage biosolids. The proposed policy statement encourages municipalities to give preference to reduction, recycling and reuse approaches for waste management over thermal treatment and landfilling with or without energy recovery approaches. The ECO plans to review the decision on this policy statement and progress on its implementation. For additional information about this proposal refer to Registry number 010-0420.

In September 2007, MOE advised the ECO that it is considering the U.S. EPA's pathogen standards as part of its review.

(For additional information regarding this application, refer to the Supplement to this report, pages 112–117.)

For ministry comments see page 217.

| RECOMMENDATION 9 |

The ECO recommends that MOE and OMAFRA develop quality standards that support land application of stable "pathogen-free" sewage biosolids.

Can Ecological Integrity & Logging be Reconciled in Our Flagship Park?

In November 2006, the Wildlands League branch of the Canadian Parks and Wilderness Society (CPAWS) requested a "comprehensive public review of the regulatory regime" that permits logging in Algonquin Park. According to the Wildlands League, not only has a public review not occurred since 1989, the regulatory regime doesn't adequately protect the environment and isn't consistent with the Ministry of Natural Resources' Statement of Environmental Values (SEV). The Wildlands League stated that "industrial activity, no matter how carefully conducted, is inconsistent with the purpose of Ontario's parks" and the recently enacted *Provincial Parks and Conservation Reserves Act (PPCRA)*. Over 8,000 kilometres of roads have been built and, quoting from a prior ECO review on the subject of logging in Algonquin Park, the Wildlands League noted that these roads "are a corridor into the heart of the Park for invasive alien species and increase the risk to sensitive Park features such as the interior trout lakes and the endangered wood turtle." (The full text of the prior review can be found in the 2005/2006 Annual Report on pages 128–131.)

Background

In response to public pressure, MNR limited logging activities in 1974 to the Recreation-Utilization zone of Algonquin Park – a zone that as of May 2007 comprises about 78 per cent of the park's area or 534,000 hectares. Four years later, Cabinet banned major industrial activity, including commercial logging, in provincial parks. Today, the sole exception to the commercial logging ban is Algonquin Park.

During the consultations on the *PPCRA* in the fall of 2004, MNR assured stakeholder groups that commercial logging would still be allowed in Algonquin Park. However, the Minister also asked the Ontario

Parks Board of Directors to provide him with recommendations about "how to lighten the ecological footprint of logging" in Algonquin Park.

Ministry Response

In January 2007, MNR denied the Wildlands League's request. MNR explained that logging in Algonquin Park supports the desired outcomes outlined in its SEV of economic development and protection of significant natural heritage features. MNR also explained that any potential for harm is addressed through park and forest management processes and legislation. MNR advised that harvesting activities occur on less than 1.5 per cent of the park's forested area in any given year. Noting that logging is important to the local economy, MNR explained that logging was discussed extensively when the *PPCRA* was developed, and parks and forestry legislation and policies were revised.

ECO Comment

MNR was not justified in denying this application. Despite MNR's assertion to the contrary, logging in Algonquin Park is not consistent with the ministry's SEV. Although MNR has a broad mandate to support the economic growth of local communities and to protect significant natural heritage features, the 1978 Cabinet decision to ban commercial logging in most classes of Ontario's parks (excluding Algonquin Park) is strong evidence that the government believes that the practice is not acceptable. In addition, the Ontario Biodiversity Strategy identifies forestry as an activity that "can degrade, eliminate and/or fragment habitat" and notes that bans on logging in provincial parks created under the Ontario Living Legacy are helping to preserve biodiversity.

MNR provided no evidence that the issue of logging in Algonquin Park had been subject to a public review since 1989. MNR cited numerous examples, including the *PPCRA*, when the public was consulted on how parks and forests should be managed – not the larger policy issue of whether commercial logging should be allowed.

The ECO is pleased that on May 2, 2007, MNR invited the public to comment on the Ontario Parks Board's recommendations on how to lighten the ecological footprint of logging in Algonquin Park. The recommendations include: reducing the area in which logging is allowed; protecting additional areas within the Recreation-Utilization zone, such as brook trout lakes; and examining how the impacts of logging can be reduced.

(For additional information regarding this application, refer to the Supplement to this report, pages 212–220.)

For ministry comments see page 218.

Portlands Energy Centre

In August 2006, two applicants requested a review of the Certificate of Approval (C of A) issued to the Portlands Energy Centre (referred to, hereafter, as the "Centre" or "PEC"), an electricity generating station under construction on the eastern lakeshore of the City of Toronto. The C of A was issued under section 9 (Air) of the *Environmental Protection Act (EPA)*. The applicants called for the review for two reasons:

1. The PEC's planned design was modified after the Centre's C of A was issued. The applicants noted that the C of A was issued for a "combined cycle" facility but, in May 2006, the Centre's president expressed the intention to operate the Centre initially as a "simple cycle" facility, for the 10-month period between June 2008 and February 2009. A combined cycle facility uses the residual heat from the natural gas-fired turbines to generate steam that drives a second set of turbines to generate electricity, making greater use of the fossil fuel-derived thermal energy. A simple cycle facility generates electricity only from the initial combustion energy, and has no second cycle.
2. The applicants also believed that MOE did not adequately take into account the cumulative effect of air pollutants (i.e., the emissions generated from the Centre, plus background concentrations of contaminants) when approving this C of A. The air emissions of principal concern to the applicants were smog precursors. The applicants felt that this particular approval process demonstrates that Ontario's C of A process fails to adequately consider cumulative effects and, therefore, it does not sufficiently protect the health of Ontario communities: "Ontario's system for evaluating and approving potential new emitters does not holistically consider an individual's total exposure from on-site and off-site sources plus background concentrations. Therefore a facility, for example the PEC, may meet Ontario's minimum requirements for approval while potentially contributing to health impacts associated with air quality."

ECO Comment

The ECO believes MOE had limited justification for denying this application for review. MOE relied extensively on the proponents' Environmental Screening Process (ESP) as evidence of *EBR*-equivalent public participation when the original C of A was issued. (The ESP was created by O. Reg. 116/01 under the *Environmental Assessment Act*.) Also, MOE relied on the *EBR* provision that the ministry can deny the request to review a decision, if it was made within five years of the application. However, the *EBR* also allows the ministry to conduct the review if the applicants provided new evidence, which they did (i.e., the short-term operation of the Centre on a simple cycle basis).

To operate the Centre on a simple cycle basis for the 10-month period, the proponents submitted an application to amend the Centre's C of A in mid-November 2006. Before applying for the amendment, the proponents were required to determine whether there would be any negative effects from the operational change. The proponents detailed that the maximum predicted off-property point-of-impingement (POI) concentrations for smog-related contaminants would be below MOE's POI criteria. On this basis, the proponents concluded that the Centre's modification would have no negative effects. Because this C of A was issued and amended under the ESP it did not undergo *EBR* scrutiny at any time.

In the past, the ECO has expressed concern that most instruments issued under *EAA* processes, such as O. Reg. 116/01, are not receiving treatment equivalent to those subject to the *EBR*. For example, mandatory notification, the right to comment and the right to seek leave to appeal for many types of instruments are rights under the *EBR*, but are not available for most instruments issued under most *EAA* processes. The ECO feels that ministry staff should have the discretion to post proposal notices on the Registry for most of these instruments.

The ECO believes the applicants had grounds to call for a review, and that MOE acted on narrow technical grounds to deny this application. The application also raised valid, broader concerns about the need to consider cumulative effects assessments as a regular part of reviewing applications for Cs of A (air), especially for those facilities proposed for placement within already burdened airsheds.

Cumulative effects assessment

The applicants argued that the C of A approval process should require a cumulative effects assessment. The ECO considers this to be a valid point. MOE noted that a cumulative effects assessment was conducted through the Environmental Screening Process under O. Reg. 116/01 but, rather than describe the outcome, merely indicated that the assessment supports the proponents' opinion that cumulative impacts for the PEC have been addressed.

The ECO recognizes the difficulty of siting new emitting facilities in areas with degraded air quality. Currently in Ontario, proponents of projects are not required to take into account ambient air quality when undertaking dispersion modelling for the purposes of applying for Cs of A. If O. Reg. 419/05 required proponents to incorporate ambient air quality considerations into dispersion modelling then many of these projects might not be approved or, if improved, would require the installation of very costly pollution control equipment. Such a requirement could place a large financial burden on the proponent of the next facility proposing to operate in certain airsheds. Further, proponents might contest such requirements, since they have no ability to control the receiving quality of the air into which they intend to release their plant's emissions.

MOE informed the applicants that including cumulative effects assessment in the C of A review process is beyond the scope of the C of A review process; the ECO finds this disappointing. Taking into account the background concentrations of contaminants when modelling the emissions of a proposed facility is key to predicting the future state of local air quality should the facility be built. MOE has acknowledged that O. Reg. 419/05 does not adequately address background concentrations, cumulative or synergistic effects, or the persistence and bioaccumulation of contaminants. It is important from an environmental and human health perspective that MOE find some means of incorporating these considerations into the modelling of new facilities on a routine, program basis.

Throughout Ontario, many facilities are operating under outdated Cs of A. As a result, there are inequities between more recently licenced facilities – which generally need to meet the most modern and stringent standards – and older permitted facilities, which often continue to operate under outdated standards and models. MOE has begun to address this problem by phasing in tougher rules for most existing facilities between 2010 and 2020. Nevertheless, it is likely that many existing sources of air emissions in the City of Toronto are greater emitters of contaminants (per unit of fossil fuel combusted) than the PEC will be when operating. New approaches will be needed to bring about improvements in air quality while still accommodating new facilities in pollutant-burdened airsheds.

The ECO agrees that where air quality is of concern, options should be considered to reduce further burdening the local airshed. Since new facilities are apt to use the newest technology and be less emission-intensive than older facilities, MOE could focus on updating outdated Cs of A in airsheds where new facilities are seeking entry. Also, some jurisdictions have required proponents to seek emission offsets; these could be considered under this circumstance. For example, in San Diego County, California, a new natural gas-powered generating station was accommodated in a burdened airshed by way of offsets. The proponent replaced a fleet of 120 diesel-fuelled trucks with newer natural gas-burning vehicles to help meet air emission limits for the airshed once the station's operation commenced.

For ministry comments see page 218.

| RECOMMENDATION 10 |

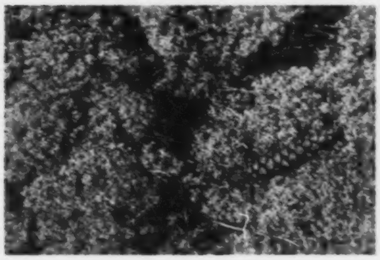
The ECO recommends that, where new emitters are seeking entry into heavily burdened airsheds, MOE implement measures to minimize cumulative effects; for example, by obtaining emission offsets and speeding up the process of updating older Cs of A in that airshed.

Other Applications of Interest

Space does not permit us to summarize in this section of the Annual Report all the *EBR* Applications for Review and Investigation that were processed in 2006/2007. Please see the Supplement for a description of additional *EBR* Applications of significance, including applications that raised the following questions:

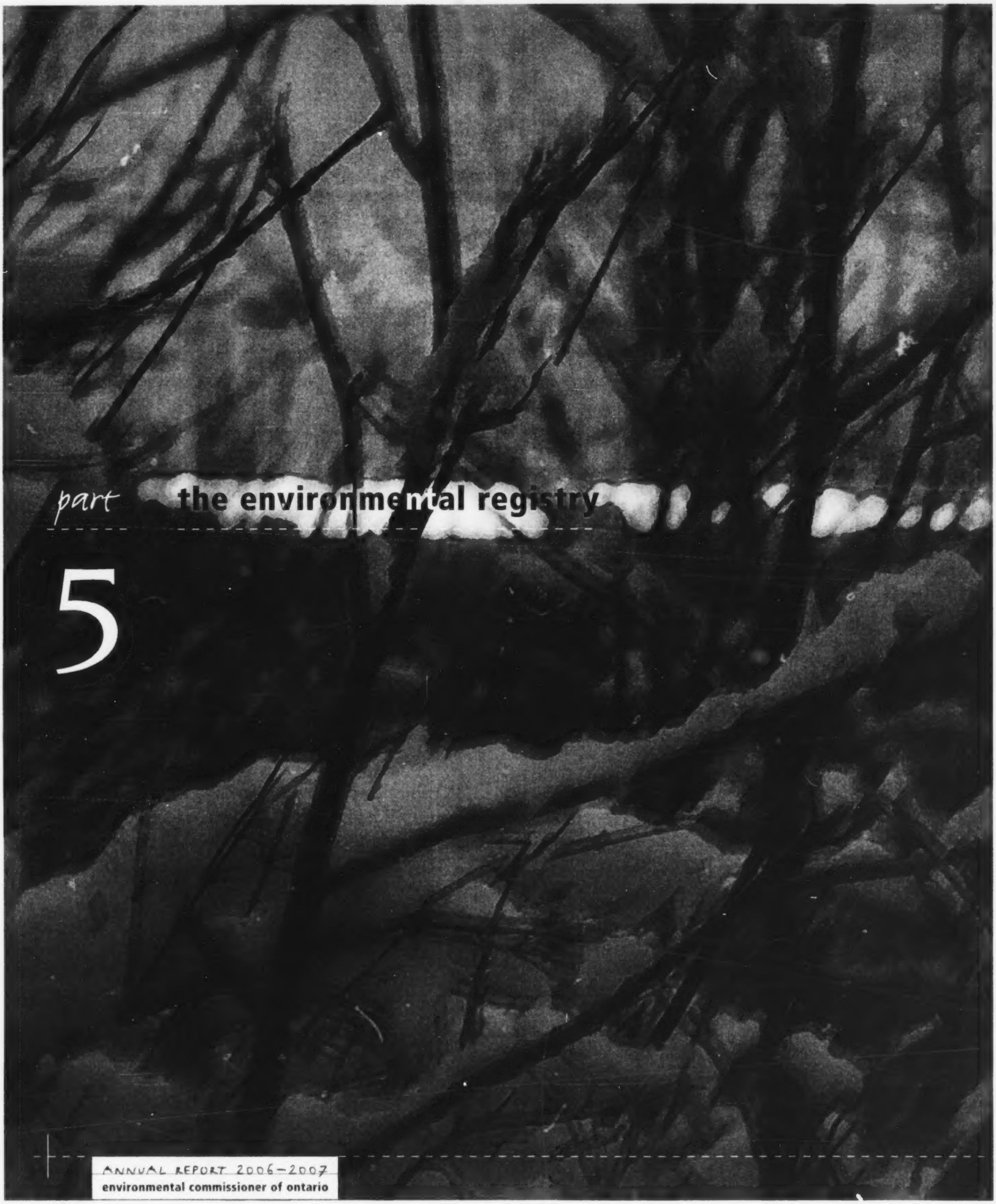
- Are 'wind farms' part of the solution to clean energy supply in Ontario? As the provincial government has moved toward greater reliance on renewable energy sources, wind turbines are becoming part of the landscape. However, this move has generated several environmental issues, including concerns about transformer noise (see the Supplement, pages 253–255).
- How concerned should Ontario citizens be about the use of recreational all-terrain vehicles on Crown land? An application for review of the Crown land "Free Use Policy" was accepted by MNR this year. The ECO comments on the need for regulatory changes (see the Supplement, pages 195–199).
- Is asbestos disposal an environmental problem? O. Reg 347 defines asbestos as non-hazardous solid industrial waste, thus allowing it to be disposed of in municipal landfills. Applicants requested a review of this classification. The ECO discusses MOE's response and provides a comprehensive review of the history of asbestos issues and their management (see the Supplement, pages 141–154).
- Do closed landfills in Ontario continue to pose an environmental threat? As described in this year's Supplement, closed landfills were the subject of two *EBR* applications for review or investigation. One was accepted by MOE, which undertook a review of a Sarnia area landfill's Certificate of Approval and some needed actions (see Supplement, pages 125–132), The other, an application for investigation was denied by MOE, leaving unresolved many of the concerns raised by the applicants concerning the impacts of leachate on ground and surface water (see Supplement, pages 243–247).

Many of the other applications reviewed in the Supplement raise issues directly related to Northern and Southern Ontario land use (as discussed in Part 2 of this report). These applications relate to wetlands, aggregates extraction, and the protection of water resources in the South, as well as comprehensive land use planning and woodland caribou conservation in the North.



part 5

the environmental registry



The Environmental Registry is the delivery mechanism of the public participation provisions of the *Environmental Bill of Rights (EBR)*. The Environmental Registry is an Internet site where those ministries subject to the requirements of the *EBR* are required to post notices of environmentally significant proposals, decisions and exceptions related to policies, Acts, regulations and instruments. The public then has the opportunity to comment on these proposals before decisions are made. The ministries must consider these comments in making their final decisions and explain how the comments affected the decisions. The Environmental Registry also provides a means for the public to access information about appeals of instruments, court actions and other activities related to ministry decision-making. The Environmental Registry can be accessed at www.ebr.gov.on.ca.

In March 2007, the Ministry of the Environment launched a redesigned and enhanced version of the Environmental Registry. The updated Registry provides a refreshed "look and feel" for users, and provides some important enhancements:

- map-based searching to help users find out what's happening in their community;
- a "My*EBR*" function that allows users to customize the Registry to quickly find the information that interests them the most;
- improved access to supporting documentation related to notices on the Registry; and
- on-line comment submission and improved access to comments submitted on proposals on the Registry.

The updated Environmental Registry makes it easier for members of the public to find and obtain information and to take part in environmentally significant government decision-making in Ontario.

Quality of Information

The Environmental Registry is only as valuable as the information it contains. The *EBR* sets out the minimum content requirements for notices that ministries post on the Registry. The ministries also have discretion on whether to include additional information. Previous annual reports of the Environmental Commissioner of Ontario (ECO) have recommended that, in posting information on the Environmental Registry, ministries should use plain language and provide clear direction about the purpose of the proposed action and the context in which it is being considered.

Ministries should clearly state how the decision differs from the proposal, if at all, and explain how all comments received were taken into account. All notices should provide a ministry staff contact name, telephone and fax number, as well as hypertext links to supporting information whenever possible.

The ECO evaluates whether ministries have complied with their obligations under the *EBR* and exercised their discretion appropriately in posting information on the Registry. This ensures that ministries are held accountable for the quality of the information provided in Registry notices.

Comment Periods

The *EBR* requires that ministries provide the public with at least 30 days to submit comments on proposals for environmentally significant decisions. Ministries have the discretion to provide longer comment periods, depending on the complexity of, and level of public interest in, the proposal.

Of 36 proposals for new policies, Acts or regulations posted by the Ministry of the Environment (MOE) in 2006/2007, 24 were accorded a comment period of 45 days or longer, including seven proposals that had comment periods of 90 days or more. The Ministry of Natural Resources (MNR) posted 34 out of 41 proposals for new policies, Acts or regulations for 45 days or more. The Ministry of Municipal Affairs and Housing (MMAH) posted eight out of 14 proposals for new policies, Acts or regulations with comment periods of 90 days. In general, the ECO commends these ministries on their improved efforts to allow for longer comment periods on many of their proposals.

Adequate Time to Comment on Acts

Bill 51, the *Planning and Conservation Land Statute Law Amendment Act*, is a recent example of a proposal notice on the Environmental Registry with an appropriate comment period. Bill 51 was introduced in the Ontario Legislature on December 12, 2005. A proposal notice for the bill was placed on the Environmental Registry the next day, providing the public with a comment period of 75 days. MMAH had conducted prior public consultation on possible reforms to the Ontario Municipal Board during the summer of 2004, including posting a proposal notice on planning reforms with an 89-day comment period. The description of Bill 51 in the proposal notice clearly summarized the main details of the proposed legislation.

Description of Proposals

Ministries are required to provide a brief description of proposals posted on the Registry. The description should clearly explain the nature of the proposed action, the geographical location(s) affected, and the potential impacts on the environment. During this reporting period, descriptions of proposals for policies, Acts and regulations generally met the basic requirements of the *EBR*. The proposal notices provided brief and understandable explanations of the actions the ministries were proposing. However, ministries could still improve the contextual background information that accompanies/supports their proposals, since many readers may not be familiar with environmental law and policy in Ontario.

The quality of descriptions for instrument proposal notices was again varied in 2006/2007. Prescribed ministries have taken steps toward providing better descriptions. However, improvements can still be made. In the case of some certificates of approval, MOE often relies on the verbatim description of the proposal as written by the company requesting approval. Such descriptions may be difficult for lay people to understand, especially if the text contains technical jargon or is overly brief.

Access to Supporting Information

The majority of proposals for policies, Acts, and regulations posted on the Registry in 2006/2007 listed the phone number and address of a contact person who could be contacted for additional information. A great proportion of policy proposals included hypertext links to supporting information, which can be an excellent aid to the public.

The ECO commends MOE for routinely providing an electronic copy of certificates of approval with its decision notices. However, the ECO urges MNR and other prescribed ministries to provide an electronic copy of certificates of approval with their decision notices, such as those for instruments under the *Aggregate Resources Act*.

The ECO notes that it is important for ministries to provide public access to the final version of documents consulted on and approved for use. For example, in May 2005, MNR posted a proposal notice for a revision of its Policies and Procedures Manual for the administration of the *Aggregate Resources Act*, and the ministry provided a hypertext link to the proposed manual. In April 2006, MNR posted a decision notice for its revisions to the manual, but it did not provide a hypertext link on the Environmental Registry to the approved version of the manual. That same month, the ECO requested that MNR make the approved manual available online to the public, but the ministry refused. However, ministry staff informed the ECO that they would make the manual available to members of the public on a compact disc and that the public also could access the manual in the ministry's district offices. More than a year later, members of the public are still having difficulty accessing the manual, and have informed the ECO that MNR will not provide the manual to them in any form. The ECO believes that these actions by MNR run directly counter to the purposes of transparency and accountability found in the *Environmental Bill of Rights*.

Environmental Impacts

The ECO has expressed concern in previous annual reports that ministries are not adequately explaining the environmental impacts of proposals. Although the *EBR* does not legally require ministries to include this information, a description of potential impacts provides the public with the information necessary to make informed comments on proposals.

In 2006/2007, most ministries failed to provide an adequate explanation of potential environmental impacts in their proposal notices for policies, Acts, regulations and instruments. Typically, only MNR and MOE included a description of environmental impacts in the brief regulatory impact statements that accompanied notices of proposed regulations.

Description of the Decision

Once a ministry has made a decision on a proposal posted on the Registry, the *EBR* requires the minister to provide notice of that decision as soon as possible. The description of the decision in a Registry notice lets residents of Ontario know the outcome of the public consultation process. Most descriptions of ministry decisions, particularly for instruments, continue to be quite brief. Some simply stated that a decision was made "to proceed with the proposal" or that "approval granted." In the interest of clarity and transparency, ministries should include the dates on which the decision was made and when it became effective, and the regulation number, if applicable.

Explaining How Public Comments Were Addressed

The *EBR* requires that prescribed ministries explain how public comments were taken into account in making a decision. A ministry should take the time and effort to summarize the comments received following a posting, and explain why it made (or chose not to make) any changes as a result of each comment or group of related comments. Without this explanation, the public will not know whether its comments were considered. In situations where there are a large number of comments, ministries should make an effort to summarize them appropriately and describe their effect on the decision.

The ECO notes that ministries can continue to make improvements in explaining how public comments are addressed. For example, the Ministry of Energy received 2,016 comments on its proposed Integrated Power System Plan – Supply Mix. Although form letters accounted for many of the comments, at least 240 unique comments from individuals and organizations were also submitted for consideration. Many of these comments were substantial in nature and included background reports and technical documents. ENG summarized the effect of comments on the decision in just three sentences totalling 65 words. ENG should have provided a more detailed description of the points of view provided by commenters, and noted that concerns about continued reliance on nuclear power predominated. As well, ENG made little effort to describe the breadth and scope of comments received. ENG could have stated more clearly that the proposal was affected by the comments received during the *EBR* consultation.

Summary

The Environmental Registry usually provides the first point of contact for Ontario residents who want to participate in environmental decision-making. The Registry should be as user-friendly as possible. The recommendations contained in this and previous annual reports are intended to improve the quality of information on the Registry and to ensure that the public is able to participate fully in Ontario's environmental decision-making process.

For ministry comments see page 218.

Unposted Decisions

Under the *EBR*, prescribed ministries are required to post notices on the Environmental Registry to inform the public of environmentally significant proposals and to solicit public comment. Sometimes, ministries fail to meet this legal obligation, and the ECO must make inquiries and report to the public on whether their *EBR* public participation rights have been violated. During this reporting period, a number of ministries

did not comply with *EBR* notice and comment requirements, including the Ministries of Environment (MOE), Natural Resources (MNR), Northern Development and Mines (MNDM), and Transportation (MTO).

The ECO was disappointed this year at the many instances in which ministries failed to properly post regular proposal notices for environmentally significant policies and regulations, as required by the *EBR*. Summarized below are three instances where ministries inappropriately posted "information notices" on the Registry instead of the required proposal notices.

While posting an information notice is better than posting no notice at all, the ECO is concerned about the gradual loss of transparency and consultation rights when ministries fail to post regular notices for new environmentally significant policies or regulations. Important differences exist between regular proposal notices posted on the Registry and information notices. With regular proposal notices, a ministry is required to consider both the public comments and its Statement of Environmental Values before making a final decision, as well as post a decision notice explaining the effect of the comments on the ministry's decision. In addition, with regular proposal notices, the ECO may review the extent and manner in which the ministry considered the comments in making its final decision. A regular proposal notice is superior to an information notice and provides greater public accountability and transparency.

The ECO notes that the need for a regular proposal notice, which provides an opportunity for full public consultation before a decision is made, was clearly illustrated in two of the cases – MNR's Caribou Recovery Strategy and MOE's environmental assessment exemption for the Integrated Power System Plan – by the very high level of public interest evoked by the posting of the information notices. In response to the ministries' invitation to comment, provided in both of these information notices, the ministries received *hundreds* of comments.

MNR's Caribou Recovery Strategy

Forest-dwelling woodland caribou are a species at risk in Ontario. In 2006, MNR posted an information notice on the Registry advising the public that it had completed its Draft Recovery Strategy for Forest-dwelling Woodland Caribou in Ontario, and provided a 60-day comment period. (For more on the province's caribou recovery strategy, see pages 75–80 of this Annual Report.) The ECO wrote to MNR, advising the ministry that the recovery strategy should be reposted as a regular proposal notice on the Registry.

MNR's response to the ECO's letter was that recovery strategies are "advice to government" by a given recovery team and that they are not government policies. The ministry also asserted that recovery strategies are "science" and, as such, do not require proper public consultation. MNR further stated that it is under no obligation to implement the recovery actions that are recommended and, therefore, the recovery strategies are not policy.

The ECO is not satisfied by MNR's arguments. The *EBR* defines a policy as any "program, plan or objective and includes guidelines or criteria to be used in making decisions." The recovery strategies are clearly developed for the purpose of assisting the government in making decisions relating to the management of caribou. Accordingly, recovery strategies are government policies and must be properly posted on the Environmental Registry as proposal notices to ensure government accountability and transparency. The rationales put forward by MNR, such as the arguments that the policy is "science-based" and contains actions that may not be implemented, are not cause to exempt the policies from the *EBR* regular posting requirements.

The improper posting of recovery strategies is a systemic problem that the ECO has repeatedly requested that MNR resolve (see pages 23–24 of the 2003/2004 Annual Report and pages 176–177 of the 2005/2006 Annual Report). The ECO strongly urges MNR to rectify this problem when it posts future recovery strategies.

MOE's EAA Exemption for the Integrated Power System Plan

On June 12, 2006, the Ontario government passed a new regulation (O. Reg. 276/06) under the *Environmental Assessment Act (EAA)*, designating and then exempting the province's Integrated Power System Plan (IPSP) from the requirement to undertake an individual environmental assessment in accordance with Part II of the *EAA*. The IPSP is a major, long-term electricity system plan for the province, which will include recommendations on everything from generation sources to transmission plans to conservation and demand management practices. On June 16, 2006, MOE posted an information notice on the Registry advising the public of this regulation.

On June 19, 2006, the ECO wrote a letter to the ministry stating that the use of an information notice in this instance was inappropriate. The ECO expressed strong disagreement with the ministry's assertion that full notice on the Registry was not required because the regulation was "administrative in nature." MOE responded that the regulation "simply confirms the law" but, nonetheless, agreed to repost the information notice a few days later to include an invitation for public comments. In response, the government received hundreds of public comments, but did not amend the regulation.

The ECO remains unconvinced that O. Reg. 276/06 is "administrative in nature" or "simply confirms the law." The ECO believes that the decision to exempt the IPSP from the requirement to conduct an individual environmental assessment under the *EAA* is clearly environmentally significant. Accordingly, MOE should have posted a regular proposal notice.

For more on this regulation, see pages 81–86 of the Annual Report, as well as pages 59–61 of the Supplement to the Annual Report.

MTO's Highway Guides

In 2002, MTO began working on an Environmental Standards Project to develop a systematic approach to environmental management. Over the past five years, MTO has developed 13 documents to provide ministry staff and its agents with guidance and tools to protect the environment during all stages of highway management. In July 2006, MTO posted two information notices on the Registry advising the public of two new documents developed under its Environmental Standards Project – the Environmental Reference for Contract Preparation and the Environmental Standards and Practices User Guide – and providing a 45-day comment period for each. All previous guides developed under this project had been posted on the Registry as regular proposal notices.

MTO describes both of these documents as informational or reference documents that do not provide any new policy or direction. The Environmental Reference for Contract Preparation provides a reference list of environment-related contract documentation to assist with the preparation of construction contracts, as well as information to assist with the implementation of environmental mitigation options. The Environmental Standards and Practices User Guide is described by MTO as a "road map" to the other MTO documents that provide guidance on environmental assessment and impact mitigation.

Despite MTO's description of these guides as purely informational, the ECO's review of the documents determined that they went beyond mere information to actually providing guidance and setting policy as defined in the *EBR*. Accordingly, the ECO sent a letter to MTO urging the ministry to post regular proposal notices on the Registry to provide for full public notice and comment. MTO responded by stating that the two documents were developed in order to direct users to other documents where the policies could be found, and that they did not themselves establish new direction. MTO also concluded that they were not environmentally significant.

The ECO believes that these two documents are both environmentally significant and satisfy the definition of policy under the *EBR*. The User Guide, for example, provides general guidance on how planners and designers are to avoid or mitigate impacts on wetlands. In addition, the ECO believes that portions of the documents are, in fact, new policy not found elsewhere. As such, these documents should have been posted on the Registry as regular proposal notices.

For a description of all of the unposted decisions reviewed by the ECO this year, refer to pages 1–8 of the Supplement to this Annual Report.

For ministry comments see page 218.

Information Notices

A ministry may post an "information notice" in cases where it is not required under the *EBR* to post a proposal notice on the Environmental Registry for public comment. During the 2006/2007 reporting year, eight ministries posted 117 information notices in total, although that number includes some information notices that were reposted and updated several times within the year. If these double postings are subtracted from the total, as well as the notices MNR posted related to 28 Forest Management Plans, eight ministries posted 70 unique information notices during 2006/2007. The number of unique postings by each ministry are listed in the table below.

Ministry	**Number of Information Postings**
Energy (ENG)	1
Environment (MOE)	11
Health and Long-term Care (MOHLTC)	1
Municipal Affairs and Housing (MMAH)	19
Natural Resources (MNR)	23 (+ 28 Forest Management Plans)
Northern Development and Mines (MNDM)	12
Public Infrastructure Renewal (MPIR)	1
Transportation (MTO)	2

The ECO reviews whether or not ministries use information notices appropriately, and considers whether notices are clear and complete. Please refer to Section 2 in the Supplement to this report for a discussion on the appropriate use of information notices and on the components of a good quality information notice. The Supplement also presents a description of each information notice posted this year.

Appropriate Use of Information Notices

Several ministries used information notices during this reporting period to inform the public about initiatives which are legally excepted from the *EBR* posting requirements. For example, MOE posted several notices informing the public about hearings and decisions related to hearings under acts, such as the *Consolidated Hearings Act*, which are not prescribed for posting under the *EBR*. MOE also posted an information notice, requested comments and posted a follow-up notice related to a Director's Order to clean up a sewage lagoon in West Grey County. In addition, MOE made good use of an information notice to bring attention to an opportunity to provide comments to the Canadian Council of Ministers of the Environment on a draft Canada-wide strategy for managing municipal wastewater effluent.

Inappropriate Use of Information Notices

On several occasions during this reporting period, ministries used information notices inappropriately, arguing that the initiatives in question were not "policy decisions" for a variety of reasons. Because the ECO followed up with the ministries on these notices, they are described in Part 5, Unposted Decisions, of this Annual Report and, in more detail, in the Supplement.

MNR also used an information notice to inform the public that it had eliminated the requirement for work permits under the *Lakes and Rivers Improvement Act* for all activities other than dams. MNR said that the change would not significantly affect the environment, and that the activities no longer regulated by MNR would require permit approvals from Conservation Authorities under the *Conservation Authorities Act*. MNR provided this information notice to the public four months after the regulation had been passed.

MNR also used an information notice for some "interim" policies and procedures related to buildings in parks and conservation reserves. The ECO has advised MNR previously that although a new guideline, policy or direction may be labeled "interim," it is still considered a policy for the purposes of the *EBR*.

Need for Ministries to Make Decisions Subject to Regular Notice and Comment

Ministries continue to post information notices for several types of environmentally significant decisions because the relevant instrument, act and/or ministry have not yet been prescribed under the *EBR*.

Examples this year include 13 MMAH notices for municipal official plan amendments and zoning by-laws to implement the *Oak Ridges Moraine Conservation Act* and Plan. These instruments were posted as information notices because MMAH has not yet prescribed them under the *EBR* (even though the Act was enacted in 2001 and MMAH committed to prescribing such instruments in 2002). Similarly, the Greater Golden Horseshoe Growth Plan was posted as an information notice because the Ministry of Public Infrastructure Renewal is not yet prescribed under the *EBR* (even though the ministry was created in 2004).

While, technically, these decisions did not have to be posted on the Environmental Registry for comment, this is only because the ministries have been too slow to legally prescribe them under the *EBR*. The ECO has previously recommended that new provincial laws and government initiatives that are environmentally significant be prescribed under the *EBR* within one year of implementation (see page 9 of the 2004/2005 ECO Annual Report and an update on page 169 of this year's Annual Report).

In addition, MNDM posted 11 information notices during the 2006/2007 reporting period for amendments to mine closure plans. MNDM did not classify amendments to mine closure plans (if proposed by the licensee) as instruments under the *EBR*. The ECO continues to encourage MNDM (see page 19 of the ECO 2005/2006 Supplement) to consider regulatory or legislative amendments that would provide opportunities for public participation on closure plan amendments through regular proposal notices on the Registry in the future.

For ministry comments see page 219.

Exception Notices

The *EBR* allows ministries, in very specific circumstances, to post an "emergency exception notice" or "equivalent public participation exception notice" to inform the public of a decision and explain why it was not posted for public comment. The ECO reviews whether ministries use exception notices appropriately.

The ministries posted 24 exception notices during this reporting year, and most of them were deemed acceptable uses of the exception provisions, as permitted under the *EBR*. MOE posted only two exception notices. MNR posted one emergency exception notice and twenty-one equivalent public participation exception notices. Please refer to Section 3 of the Supplement to this report for a description of all the notices.

The ECO is pleased that the ministries reduced their reliance on the emergency exception during this reporting year, posting only two this year compared to 11 in 2005/2006. There were a few equivalent public participation notices, however, that the ECO believes should have been posted as regular proposal notices to allow the public an opportunity for comment.

MOE's Use of Exceptions

MOE posted an exception notice informing the public that it was putting a hold on all approvals for small used oil space heaters, which included a link to a related proposal notice for a regulation banning burning used oil in space heaters. The ministry provided no rationale for the use of an exception notice. MOE may have intended the notice to be posted as an "information notice," which would have been more appropriate.

MOE relied on an emergency exception to notify the public about a regulation which exempted fuel suppliers from the fuel quality requirements for ethanol in gasoline in order to increase provincial gasoline supplies during the period of fuel shortages in the winter of 2007. This was an acceptable use of an emergency exception.

MNR's Use of Exceptions

MNR relied on the "equivalent public participation" exception to post notice of regulations to be made under the *Conservation Authorities Act* for each of the province's 38 conservation reserves to regulate "Development, Interference with Wetlands and Alterations to Shorelines and Watercourses." Since the earlier consultation on the generic regulation was not site-specific, these regulations should have been posted individually as regular notices for public comment. The public should have had an opportunity to comment on the delineation of wetlands and waterways as set out in maps in the regulation for each conservation authority.

Late Decision Notices and Undecided Proposals

When ministries post notices of environmentally significant proposals for policies, Acts, regulations or instruments on the Environmental Registry, they must also post notices of their decisions on those proposals, along with explanations of the effect of any public comments on their final decisions. But sometimes ministries fail to post decision notices promptly or do not provide the public with updates on the status of older proposals for which a decision is still pending. In those cases, neither the public nor the ECO is able to tell whether the ministry is still actively considering the proposal, or has decided to withdraw the proposal, or has implemented a decision based on the proposal while failing to post a decision notice. This reduces the effectiveness of the Registry, and may make members of the public reluctant to rely on the Registry as an accurate source of information.

The ECO periodically makes inquiries to ministries on the status of proposals that have been on the Registry for more than a year and suggests they post either updates or decision notices. Below is a small sampling of the many proposals for policies, Acts, regulations and instruments posted before March 31, 2006, and still found on the Registry in April 2007. Some of these proposals were posted as far back as 1996.

Ministry of Transportation

The Class Environmental Assessment for Provincial Transportation Facilities sets out the requirements for MTO undertakings to receive approval as a class project under *the Environmental Assessment Act* (January 7, 1998)

Ministry of the Environment

Amendment to Ontario Regulation 681/94 - Classified Instruments for Pesticides (March 31, 2000)

Ministry of Northern Development and Mines

Provincially Significant Mineral Potential Procedural Manual for Ontario (August 16, 2002)

Ministry of Municipal Affairs and Housing

Regulation to prescribe the *Oak Ridges Moraine Conservation Act*, 2001, under the *Environmental Bill of Rights (EBR)* - Amendment to O. Reg 73/94, the General Regulation under the *EBR* (September 2, 2003)

Ministry of Health and Long-Term Care

Protocol Respecting Drinking Water Sampling (January 28, 2004)

Ministry of Energy

A Proposal to Implement a Generation Attribute Certificate Tracking System to support the Environmental Labelling Program (March 21, 2003)

Ministry of Agriculture, Food and Rural Affairs

Intensive Agricultural Operations in Rural Ontario (July 13, 2000)

Ministry of Culture

Three Proposed Regulations under the *Ontario Heritage Act* (October 31, 2005)

Ministry of Natural Resources

Proposed Amendments to Seven Statutes Administered by the Ministry of Natural Resources to Clarify Legal Ambiguities and Modernize Statutes (January 4, 2005)

For ministry comments see page 219.

part 6 ministry progress

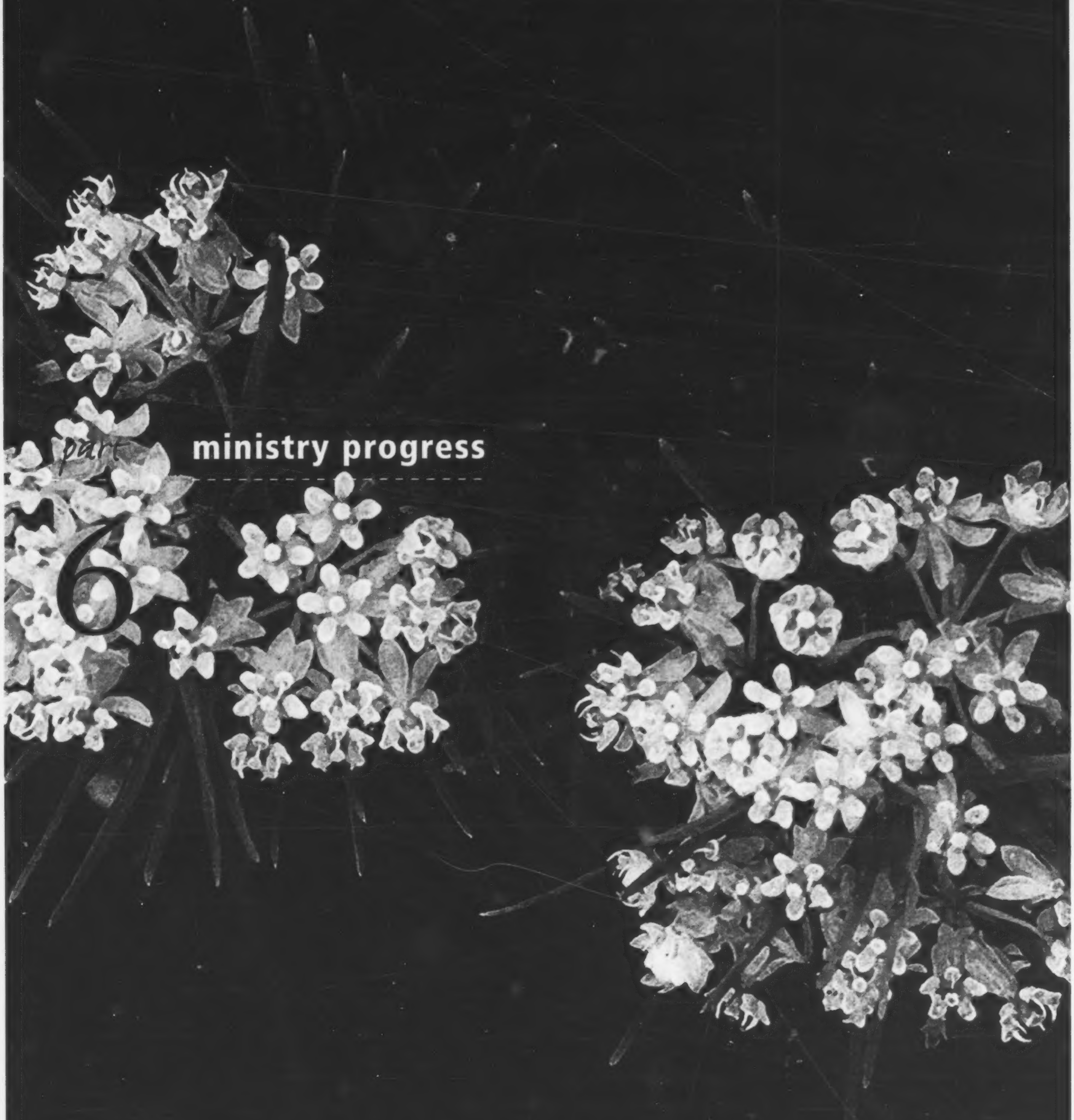
ANNUAL REPORT 2006–2007

Part 6 reports on the progress made by prescribed ministries on two fronts. The ECO follows up every year on the progress made by these ministries in implementing ECO recommendations made in previous annual reports. This section also includes a summary of progress made in prescribing ministries, new laws, and ministry processes under the *EBR*.

Keeping the *EBR* in Sync With New Laws and Government Initiatives

As regular readers of ECO annual reports know, a major challenge facing the Ontario government and the ECO is to keep the *EBR* in sync with new laws and government initiatives, including the creation of new ministries. The ECO strives to ensure that the *EBR* remains up to date and relevant to Ontario residents who want to participate in environmental decision-making. The Commissioner and his staff constantly track legal and policy developments at the prescribed ministries and in the Ontario government as a whole, and encourage ministries to update the *EBR* regulations to include new laws and prescribe new government initiatives that are environmentally significant.

In our 2004/2005 Annual Report, the ECO outlined some of the reasons why it is necessary to constantly update the *EBR* regulations and provided a summary of the status of various recent Acts and regulations. We recommended in our 2004/2005 Annual Report that new, environmentally significant government laws and related initiatives be prescribed under the *EBR* within one year of implementation, and we followed up on this recommendation in our 2005/2006 Annual Report. This year, we have updated the



part 6

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As indicated in Table 1, there continue to be serious delays in making certain laws subject to the *EBR*. For example, the six-year delay in prescribing the *Oak Ridges Moraine Conservation Act (ORMCA)* was unacceptable and frustrated the intent and spirit of the *EBR*. The ECO is concerned about these lengthy delays; they deprive the public of their rights to participate in environmentally significant decisions, to ensure that ministry SEVs are considered, to file leave to appeal applications, and to request *EBR* investigations and reviews. Moreover, the ECO is not legally empowered to subject ministry decision-making under these non-prescribed Acts to the same degree of scrutiny as would normally occur for decisions made under prescribed Acts and regulations.

In the 2006/2007 reporting period, the ECO observed very little progress in expanding *EBR* coverage, despite ministry commitments to the ECO (as set forth in the tables below), as well as a number of ECO recommendations in our 2005/2006 Annual Report. In March 2007, MOE advised the ECO that a proposal for regulatory amendments to O. Reg. 73/94, which will address some of the outstanding issues described below, would be posted on the Registry in the spring of 2007. As of August 2007, MOE had not posted such a proposal.

In our 2005/2006 Annual Report, we recommended that MMAH and MOE fully prescribe the *Building Code Act* under the *EBR* for regulation-making and instrument proposal notices and applications for reviews. In March 2007, MMAH and MOE advised the ECO that MMAH has no plan to implement the ECO recommendation on prescribing the *Building Code Act*. This is an unfortunate decision and it means that transparency and accountability for MMAH policy- and law-making on green building materials and energy technologies will be reduced. The ECO urges MMAH to reconsider its approach given the growing public concern about environmental issues such as climate change.

In March 2007, MMAH reported that it is committed to prescribing the *Greenbelt Act, 2005* under the *EBR*, and "is taking the necessary steps to achieve this." In June 2007, this Act was prescribed, more than two years after it took effect.

Table 2 contains an update on the status of ECO requests to ministries or applications for review made by the public to make certain ministries subject to the *EBR* or to expand the number of *EBR* processes that apply to a prescribed ministry. In our 2005/2006 Annual Report, we reported that ministries appeared to be more receptive to requests for review submitted by members of the public under the *EBR* to prescribe

Acts and ministries. The ECO applauded this new receptivity. This year we note that no progress has been made, as of September 1, 2007, on any of the files described in Table 2.

The Ministry of Public Infrastructure Renewal (MPIR) was established by the Ontario government in November 2003 with a mandate to support upgrades to roads, transit systems and other public infrastructure and to promote sound urban and rural development. To support this vision, in the spring of 2005, the Ontario government enacted a major piece of MPIR legislation, titled the *Places to Grow Act (PGA)*.

In early 2004, the ECO wrote to MPIR requesting that the ministry be prescribed for SEV consideration, Registry notice and comment, regulation proposal notices and for applications for review under the *EBR*, and that the *Places to Grow Act* be prescribed for regulation proposal notices and for applications for review under the *EBR*. In January 2006, the ECO met MPIR staff and were advised that work was on-going. In March 2007, MOE advised the ECO that a package containing amendments to O. Reg. 73/94, which will make MPIR subject to the *EBR*, would be posted on the Registry in the spring of 2007. As of September 1, 2007, no notice had been posted. The lack of progress in prescribing MPIR under the *EBR* is a significant disappointment because MPIR continues to work on growth management plans for many areas of Ontario, with clear environmental significance.

Table 1 | Status of ECO Requests to Prescribe New Laws, Regulations and Instruments Under the *EBR*, as of August 2007

Act, Regulation or Instrument (Ministry)	ECO Request to Prescribe	Status as of August 2007 and ECO Comment
Building Code Act (MMAH)	The ECO's 2005/2006 Annual Report recommended that MMAH and MOE fully prescribe the *Building Code Act* under the *EBR* for regulation-making and instrument proposal notices and applications for reviews.	In March 2007, MMAH and MOE advised the ECO that MMAH has no plan to implement the ECO recommendation on prescribing the *Building Code Act*. This is an unfortunate decision, and it means that transparency and accountability for MMAH policy- and law-making on green building materials and energy technologies will be reduced. The ECO urges MMAH to reconsider its approach given the growing public concern about environmental issues, such as climate change.

Act, Regulation or Instrument (Ministry)	ECO Request to Prescribe	Status as of August 2007 and ECO Comment
Greenbelt Act, 2005 (MMAH)	The ECO wrote to MMAH in April 2005 requesting that it prescribe the *Greenbelt Act* under the *EBR* for regulation and instrument proposal notices and applications for reviews.	In April 2005, MMAH informed the ECO it will begin to work on the amendments required to prescribe the *Greenbelt Act* under the *EBR*. The *Greenbelt Act* was prescribed for regulation proposal notices (but not for instruments) and applications for review by O. Reg. 217/07 passed in June 2007.
Kawartha Highlands Signature Site Parks Act, 2003 (MNR)	The ECO wrote to MNR in April 2005 requesting that it prescribe the *KHSSPA* under the *EBR* for review and investigation applications. In March 2007, MNR advised that staff have initiated the process leading to the proclamation of the *KHSSPA*.	The *KHSSPA* came into effect on June 15, 2007. The ECO urges MNR and MOE to immediately begin work on prescribing the *KHSSPA* under the *EBR*.
Oak Ridges Moraine Conservation Act, 2001 (MMAH)	The ECO wrote to MMAH in December 2001 requesting that it prescribe the *ORMCA* under the *EBR* for regulations and instrument proposal notices and applications for reviews. In early 2003, MMAH staff briefed ECO staff on its plan to use information notices for official plan amendments (OPAs) related to *ORMCA* implementation, rather than regular instruments. In March 2006, MMAH informed the ECO that it was working on the amendments to O. Reg. 73/94 that are required to prescribe the *ORMCA* under the *EBR*.	In March 2007, MMAH reported that it is committed to prescribing the *ORMCA* under the *EBR*, and "is taking the necessary steps to achieve this." The *ORMCA* was prescribed for instrument proposal notices by O. Reg. 216/07 passed in June 2007. The ECO commends MMAH and MOE for making this overdue regulatory change.

Table 2 | Status of Public and ECO Requests to Prescribe New Ministries, Agencies and *EBR* Processes, as of August 2007j165

Ministry or Process	ECO or Ontario Resident Request to Prescribe	Status as of August 2007 and ECO Comment
Making the Ministry of Transportation (MTO) subject to the application for review process (MTO and MOE)	In June 2003, two applicants requested that MTO be made subject to Part IV of the *EBR* which, if granted, would permit residents of Ontario to request reviews of MTO's policies and prescribed Acts, regulations, and instruments (permits, licences, etc.), and to ask MTO to review the need for new Acts, regulations and policies. To date, MTO's participation has been limited to creating a Statement of Environmental Values (SEV) and posting proposals for new environmentally significant Acts and policies on the Registry for public comment. The applicants feel that the *EBR*'s application for review procedure should apply to MTO and its activities because of the environmental impacts of highway development and use, and the need for MTO to consider and/or promote modes of travel other than those that are highway-based, including alternatives such as rail.	*In September 2005, the Ministry of the Environment (MOE) recommended prescribing MTO for the purposes of applications for review under the EBR. For the full comment on this application for review, see the 2005/2006 ECO Annual Report Supplement.* In March 2007, MTO and MOE advised the ECO that a package of regulatory changes containing amendments to O. Reg. 73/94, which will make MTO subject to *EBR* reviews, would be posted on the Registry in the spring of 2007. As of Sept. 1, 2007, no notice had been posted.
Making the Ministry of Education (EDU) subject to the *EBR* (EDU and MOE)	In May 2004, two applicants requested that the MOE review O. Reg. 73/94, the General Regulation under the *EBR*, to determine whether EDU should be added as a prescribed ministry under the *EBR*. In July 2004, MOE advised the ECO that it was reviewing the request and would require six months to complete its review. A similar request was made to MOE in late 1999, and it was reviewed in the ECO 2000/2001 Annual Report.	In September 2005, MOE completed its review and recommended prescribing EDU for the purposes of consideration of a SEV that the ministry would create under the *EBR*. For the full ECO comment on the MOE's handling of this review, see pages 123–27 of the ECO 2005/2006 Annual Report.

Ministry or Process	ECO or Ontario Resident Request to Prescribe	Status as of August 2007 and ECO Comment
Making the Ministry of Education (EDU) subject to the *EBR* (EDU and MOE) (continued)		In November 2005, MOE posted a proposal notice for a regulation to amend O. Reg. 73/94. As of June 2007, MOE had not posted a decision notice on the proposal. In March 2007, EDU announced that Ontario's Curriculum Council would review how environmental education is taught in elementary and secondary schools. A working group, led by astronaut and scientist Dr. Roberta Bondar, is currently reviewing public submissions and a report to the minister is expected by summer 2007.
Making the Ministry of Public Infrastructure Renewal (MPIR) subject to the *EBR* (MPIR and MOE)	MPIR was established by the Ontario government in November 2003 with a mandate to support upgrades to roads, transit systems and other public infrastructure, and promote sound urban and rural development. To support this vision, in the spring of 2005, the Ontario government enacted a major piece of MPIR legislation the *Places to Grow Act (PGA)*. In early 2004, the ECO wrote to MPIR requesting that the ministry be prescribed for SEV consideration, Registry notice and comment, regulation proposal notices, and applications for review under the *EBR*, and that the *PGA* be prescribed for regulation proposal notices and applications for review under the *EBR*.	The ECO met MPIR staff in early 2006. In March 2007, MOE advised the ECO that a package containing amendments to O. Reg. 73/94, which will make MPIR subject to the *EBR*, would be posted on the Registry in the spring of 2007. As of Sept. 1, 2007, no notice had been posted. The lack of progress in prescribing MPIR under the *EBR* is a significant disappointment, because MPIR continues to work on growth management plans for many areas of Ontario with clear environmental significance.

Ministry or Process	ECO or Ontario Resident Request to Prescribe	Status as of August 2007 and ECO Comment
Making the Ministry of Public Infrastructure Renewal (MPIR) subject to the *EBR* (MPIR and MOE) (continued)	Although the *PGA* requires that notices of a proposed growth plan be posted on the Registry MPIR is currently unable to post these notices as regular policy proposals because it is not a prescribed ministry. Since July 2004 MPIR has posted six information notices about its work and proposed growth plans on the Registry.	
Making the Ontario Heritage Trust (OHT) subject to the *EBR* (MNR, MCL and MOE)	The *Ontario Heritage Act (OHA)* is the legislative framework for heritage conservation in Ontario. In 2005, the OHA was amended to formally recognize the natural environment conservation function of the Ontario Heritage Trust (formerly the Ontario Heritage Foundation). In March 2006, ECO wrote to the Ministry of Culture (MCL) requesting that OHT be prescribed for environmentally significant decisions. This would include SEV consideration and Registry notice and comment for proposal notices for instruments and policies. For further detail on the amendments to the *OHA* and the OHT, see the ECO 2005/2006 Annual Report, pages 76–79.	In October 2006, the ECO's 2005/2006 Annual Report recommended that the OHT become an *EBR*-prescribed agency. In August 2007, ECO and MCL staff met and MCL indicated that it was not planning to implement the ECO recommendation because OHT is not a policy-making agency. The ECO is very disappointed by MCL's approach to prescribing the OHT and feels that the current funding, policy-making and reporting relations and functions are confused and lack transparency because they are fragmented between MCL, MNR, and the OHT.

For ministry comments see page 219.

Progress Report on Statements of Environmental Values (SEVs)

The *Environmental Bill of Rights (EBR)* requires each prescribed ministry to develop a Statement of Environmental Values (SEV) to guide its decision-making. Each ministry's SEV outlines how that ministry applies and considers the purposes of the *EBR* in its environmental decision-making, along with social, economic, scientific and other factors. Ministries are required to consider their SEVs whenever environmentally significant decisions are made in the ministry, and the ECO is required to report annually on ministry compliance with SEVs.

Most prescribed ministries proposed updated SEVs in July 2005, through a notice posted on the Registry by MOE (# PA05E0016). A 60-day comment period was provided. The ECO has been advised that decisions to finalize these SEVs will likely be posted in June 2007.

In April 2007, the public had a 45-day opportunity to comment on proposed SEV revisions for two ministries: the Ministry of Agriculture, Food and Rural Affairs, and the Ministry of Government Services (Registry # 0100199 and #0100200).

The ECO continues to believe that SEVs can and should serve as potent catalysts for environmental sustainability within ministries. The ECO will review the new SEVs once they are finalized.

Ministry Responses to 2005–06 Recommendations

The ECO follows up annually on the progress made by prescribed ministries in implementing recommendations made in previous years. The ECO has requested progress reports from those ministries on key issues and recommendations made in our last report. In some cases, ministries submit updates on their own initiative and these are also summarized in this section where relevant.

Climate Change

In our 2004/2005 Annual Report (pages 59–62), the ECO requested that the Ontario government identify a lead ministry to prepare a provincial strategy to help Canada meet its climate change obligations, and that the lead ministry be provided with adequate resources to carry out this work. The Ontario government announced greenhouse gas reduction targets in June 2007. ECO will review the government's progress in achieving these targets in future annual reports.

Oak Ridges Moraine Conservation Plan Guidance

In our 2005/2006 Annual Report (pages 84–85), the ECO recommended that MMAH, MTO, MNR and MOE collaborate to develop draft guidance regarding municipal roads in the Oak Ridges Moraine (ORM) Plan area. MTO was the only ministry to respond to the ECO's request for an update on this recommendation. MTO said it is still finalizing its guidance on provincial highways in its Environmental Standards Project. MTO also said it would work with MMAH to "identify opportunities" to share MTO information and guidance that applies to provincial highways, and "develop municipal guidelines based on these standards." The ECO is concerned that this falls short of the commitment made to ECO to develop provincial guidance for municipal roads in the Plan Area, and notes that it has already been five years since the Plan was approved and the ECO first urged the ministries to prepare such guidance.

The 2005/2006 ECO recommendation also urged the ministries to finalize their draft guidance to municipalities regarding natural heritage and water protection. MNR informed the ECO in August 2007 that MNR's Oak Ridges Moraine Technical Papers have been finalized and approved. The papers have been released to the public by the Ministry of Municipal Affairs and Housing via the MMAH website, but the ministry has not posted a decision notice on the Environmental Registry.

The Greenbelt Plan

The ECO requested an update from MMAH on the progress made in implementing the *Greenbelt Act* and Plan, and on progress made in conformity amendments to municipal official plans and other harmonization processes across the encompassed municipalities. MMAH responded that municipal Official Plan amendments are being made, and the process is proceeding well in larger and upper tier municipalities. MMAH has been working with partner ministries to identify potential policies in the Oak Ridges Moraine Plan area and the Niagara Escarpment Plan for harmonizing with the rules for the Protected Countryside of the Greenbelt Plan.

ECO also requested an update on activities of the Greenbelt Council. MMAH responded that the Council has provided advice to the Minister on potential harmonization regulations in the form of criteria, and on the membership of two new advisory committees of Council. It has also given strategic direction on a framework for performance measurement. MMAH advise that staff members are actively engaged on a number of fronts in developing Greenbelt performance measures.

Regulation 903 (Wells)

In 2006/2007, the ECO requested an update on MOE's progress in implementing Recommendation 11 of our 2003/2004 ECO Annual Report – that MOE ensure that key provisions of the Wells Regulation are clear and enforceable, and that the ministry provide a plain language guide to the regulation for well installers and other practitioners. MOE reported that a manual of best practices is planned, in collaboration with key stakeholders, for the regulated community. The ministry has been continuing its work on making the regulation more workable, clear and enforceable. The ministry has established a wells hotline; a list of licensed well contractors; guidance materials recommending testing frequently for well owners; and recommendations to owners to safeguard their water by taking their samples to the local laboratories of the Ministry of Health and Long-Term Care for no-cost microbiological testing. MOE reported that it will continue with a complaint-driven compliance model. MOE conducted a province-wide inspection of licensed well contractors, unlicensed well contractors and well owners. Finally, MOE informed the ECO that it has amended Ontario's well regulation (Reg. 903), after *EBR* consultation, to strengthen protection of public health and drinking water. O.Reg 372/07 was filed on July 25, 2007 and comes into effect on December 31, 2007.

Coal Plant Emission Reduction Strategy

The ECO recommended that MOE and Ministry of Energy (ENG) develop a plan to reduce air emissions, especially emissions of mercury, from Ontario's coal-fired power plants since the closure date for these plants was extended from 2009 to 2014. MOE responded that the Ontario Power Authority (OPA) was issued a directive on June 13, 2006, to develop an Integrated Power System Plan (IPSP) for Ontario. The directive contained a number of key goals for Ontario's future electricity supply mix (e.g., the replacement of coal-fired generation in Ontario with cleaner sources in the earliest practical time frame that ensures adequate generating capacity and electricity system reliability in Ontario). The OPA has also been asked to recommend options for cost-effective measures to reduce air emissions from coal-fired generation. In an OPA discussion paper, the OPA suggests a supply mix option that allows coal plants to be replaced gradually by cleaner generation between 2011 and 2014 (while maintaining some coal-fired generation stations beyond 2011 to provide 3000 MW of insurance for system capacity risk). The province will help meet the Canada-wide Standard (CWS) for Mercury Emissions from Coal-Fired Electric Power Generating plants that would require a 60 per cent capture of mercury by 2010, and will attempt to exceed it in the future with an ultimate goal of zero mercury emissions from coal-fired power generation. After the close of the ECO's reporting year, MOE reported that the Ontario government remains committed to phasing out coal-fired generation to eliminate emissions of mercury, smog-causing pollutants and greenhouse gases from coal plants in the province. On June 18, 2007, the Premier announced that the closure of coal plants will be mandated by law.

ENG reported to the ECO that during the past three years (2003 to 2006), coal-fired electricity generation was reduced 32 per cent. During this same period, according to ENG, carbon dioxide emissions from coal-fired plants were reduced by 29 per cent, sulphur dioxide emissions by 44 per cent, and nitrogen oxide emissions by 46 per cent. ENG also referred to the OPA's IPSP and its plan for the gradual reduction of coal use in Ontario (see above). ENG noted that, under the OPA's preliminary plan, coal plant emissions will be reduced between 2005 and 2012 by at least 35 per cent for carbon dioxide, 20 per cent for nitrogen oxide, 60 per cent for sulphur dioxide, 44 per cent for mercury, and that these reductions would occur without any further investments in the coal plants.

Solid Waste Management

ECO requested an update from MOE on our 2005/2006 Annual Report recommendation that "... MOE develop a provincial solid waste management strategy that addresses the whole waste stream." In reply, MOE stated that it is committed to working with municipalities and industry to achieve better waste management and maximize diversion of waste from disposal. The ministry highlighted the following activities:

- initiation of meetings with industry to promote leadership and partnerships on packaging management;
- a lead role for MOE in the Canadian Council of Ministers of the Environment's national packaging agenda committee;
- increased public education and partnerships with organizations, such as the Recycling Council of Ontario;
- direction to Waste Diversion Ontario to expand diversion programs for municipal hazardous or special waste;
- funding of pilot innovation systems for recycling for apartment buildings; and
- enhanced IC&I inspections for compliance with 3Rs regulations.

ECO also recommended in the 2005/2006 Annual Report that MOE update and enhance its landfill inventory and make it accessible to the public. In response to ECO's request for an update, MOE replied that it is has reviewed this recommendation and is currently assessing the feasibility of a system that would include information on landfills and other types of waste-related information.

The Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement

In early June 2007, Bill 198 received Royal Assent in the legislature. Passage of this bill enacts the *Safeguarding and Sustaining Ontario's Water Act*, which makes the necessary amendments to the *Ontario Water Resources Act* for implementation of the terms of the Agreement. The details of the legislation were also posted to the Registry for public comment.

The ECO requested an update from MNR and MOE on the province's progress in the planning and implementation of conservation plans and a regional Great Lakes science strategy under the Agreement. MNR responded that it is co-chairing a regional Conservation Committee with the state of Wisconsin, and holding meetings with regional stakeholders and First Nations to seek input to a set of draft regional conservation objectives, which will be used to guide the development of state and provincial water conservation programs. Ontario representatives are also working with the state of Pennsylvania to hold a session at the annual International Association of Great Lakes Researchers (IAGLR) conference in late May 2007 to garner expertise and support for the Agreement's information and science commitments.

Three inter-ministerial work groups have also been established to ensure that Ontario will meet its Agreement commitments. These groups are:

- providing input to the development of provincial and regional basin-wide conservation objectives, water conservation and efficiency goals;
- reviewing the current state of information and science in the province, identifying gaps and collaborative opportunities across program areas and working toward development of a regional basin-wide science strategy;
- developing legislation, supporting regulations and policies to enable Agreement implementation.

Cage Aquaculture Management

The ECO reported in our 2004/2005 Annual Report on a review undertaken by MOE in response to an *EBR* application concerning cage aquaculture in Georgian Bay. ECO expressed the view that MNR and MOE need to work more diligently to ensure that water and sediment quality impacts of these operations are dealt with more proactively. ECO also identified the need for MNR to develop transparent and accountable processes related to approvals for aquaculture operations. In response to ECO's request for an update, MNR indicated that, in partnership with various agencies, it has produced a Coordinated Application and Review Guide for Cage Aquaculture Sites in Ontario, along with a Decision Support Tool. The Guide was posted for public comment to the Registry in March 2007, and will be subject to ECO review in the 2007/2008 reporting year.

Biodiversity

In our 2005/2006 Annual Report, the ECO committed to following the implementation of Ontario's Biodiversity Strategy, 2005 and to report on the actions taken by ministries to support it. The ECO requested a general update from MNR, as well as an update and copy of the report related to the following statement in the strategy: "Evaluate progress and report on implementation annually, with emphasis on the year's priorities." MNR reported that the Biodiversity Council is aware of and has discussed reporting, but that it is still determining how best to proceed. Therefore, no reports have been made public as of May 2007.

The ECO also requested an update on priority actions taken for 2006 and a summary of planned priority actions for 2007, as the strategy had outlined "priority actions for 2005." MNR reported that the Biodiversity Council has not identified priority actions for subsequent years. MNR stated that given the short horizon between the present and 2010, when the strategy will be reviewed, the Biodiversity Council is aware that attention is necessary on all 37 recommended actions.

Northern Boreal Initiative (NBI)

The ECO requested an update on the following recommendation in our 2002/2003 Annual Report: "The ECO recommends that the Ministry of Natural Resources conduct gap analyses and develop objectives and targets in order to establish a protected areas network for the Northern Boreal Initiative area as a whole."

MNR reported that it is working with 14 First Nations which have land claims or other concerns related to the northern boreal. The ministry noted that it is applying an ecosystem-based approach, setting objectives for representation of landform/vegetation associations and park class targets by eco-district and/or eco-region. In addition, the assessment of candidate protected areas considers landscape and site level design criteria, including ecological functions and connectivity.

The ECO also requested an update on the following recommendation in our 2002/2003 Annual Report: "The Ministry of Natural Resources should carry out a thorough assessment of forest management approaches that are ecologically suited to the northern boreal forest and make the research results available to the public." MNR responded that when a Northern Boreal Initiative – Community-based Land Use Planning process results in direction to proceed with a new forestry opportunity, *Environmental Assessment Act* coverage is required. *Environmental Assessment Act* coverage involves preparation of a description of the cultural, social, economic and bio-physical effects of forestry, with associated conditions to prevent, minimize and mitigate potential adverse effects. Existing knowledge, new information and consultation will support MNR's submission to ensure that forest management approaches are culturally and ecologically sound.

Northern Land Use Planning

The ECO requested an update on the following recommendation in our 2005/2006 Annual Report: "The ECO recommends that MNR, MOE, MNDM, and ENG consult the public on an integrated land use planning system for the northern boreal forest, including detailed environmental protection requirements that reflect the area's unique ecology."

MNR reported that it is committed to the protection of Ontario's Far North, including the boreal forest, through the application of existing legislative tools. The ministry explains that when any economic development is being considered, the provisions of legislation, such as the *Environmental Assessment Act*, the *Crown Forest Sustainability Act*, the *Public Lands Act*, the *Migratory Birds Convention Act* and the *Endangered Species Act*, all apply.

ENG reported that it does not have responsibility for developing policies on northern land use. MNDM stated that it is ensuring the protection of Northern Ontario, including the boreal forest, through existing legislative tools. MOE responded that the development of a comprehensive land use planning system for the North is unwarranted, as existing requirements of the *Ontario Water Resources Act* and the *Environmental Protection Act* must be fulfilled. The reader is referred to pages 51–74 for further information.

Prescribed Burns

The ECO requested an update on the recommendation in our 2004/2005 Annual Report that MNR require forestry companies to utilize prescribed burns where appropriate, while outlining a direct and supporting role for the ministry in the process. The ECO also requested an update on the number and total area of prescribed burns that were both planned and carried out in 2006.

MNR stated that it is currently updating its prescribed burning policy and the associated planning manual to outline the ministry's role in prescribed burning and provide clear direction and support for prescribed burning in Ontario. It is expected that the revised policy will be posted to Registry before March 2008.

MNR reported that in 2006 there were 21 prescribed burns planned across the province totaling 3,082 hectares. Of these, 11 (all in Southern Ontario) were completed. Three larger prescribed burns proposed for Northern Ontario were not completed due to drought conditions and seven more were postponed. Drought conditions were primary factors contributing to increased fire activity through to the end of the 2006 fire season.

Wolf Conservation

The ECO requested an update on MNR's implementation of its 2005 Provincial Strategy for Wolves and its 13 recommendations. MNR reported that two of the 13 recommendations/strategies contained in the 2005 Strategy for Wolf Conservation in Ontario have been implemented, and progress has been made on the implementation of the remaining 11.

MNR stated that it has gathered preliminary wolf abundance estimates in Algonquin Provincial Park in 2005, in Northeastern Ontario in 2006, and in Northwestern Ontario in 2007. The ministry also stated that research studies are underway in Algonquin Provincial Park, the Kawartha Highlands signature site, the Horwood Lake area (west of Timmins), and the Parry Sound/Magnetawan areas to collect baseline ecological data on wolf populations, including the role of protected areas and the effect of exploitation on hybridization between wolves and coyotes.

The ECO also requested an update on the steps taken by MNR to conserve the Eastern wolf as a "species of concern" following the management planning requirements of the federal *Species at Risk Act*. MNR responded that it will contribute to the management plan scheduled for development by the federal government by June 2008 as required.

Licensing of Zoos

In 2005/2006, the ECO recommended that "MNR engage in a formal and transparent review of its zoo-licensing policies, posting a proposal on the Environmental Registry for public comment." In response, MNR stated that it is continuing to work collaboratively with all provincial animal welfare agencies to ensure that MNR's mandate for the protection and management of *native* wildlife is considered in any policy changes. MNR also stated that any contemplated changes to zoos programs would be made in consultation with the public. MNR did not provide any indication that it would be engaging in a formal policy review of its zoo-licensing policies. The ECO continues to encourage MNR to engage in a formal review of its zoo-licensing policies and that it consider including non-native species under its zoo-licensing regime, as well as provisions that protect the general well-being of animals in Ontario zoos.

Enforcement of the *Fisheries Act*

As noted in a number of recent ECO annual reports, enforcement of section 36(3) of the *Fisheries Act (FA)* by MOE and MNR was inconsistent between 1999 and 2003, and there were serious problems with implementation of the Fish Habitat Compliance Protocol, first published in 1999 and then revised in 2004. The protocol is administered by the Aquatic Resources Management Advisory Committee (ARMAC), a multi-agency group made up of representatives from MOE, MNR, OMAF, MTO, Environment Canada, the federal Department of Fisheries and Oceans (DFO), Parks Canada, the Coast Guard and Conservation Authorities.

In February 2004, MNR and MOE representatives advised the ECO that beginning in April 2004 they would be piloting a new protocol ("the 2004 Protocol"). One key implication of the 2004 Protocol is that DFO and Environment Canada are assigned lead roles in enforcement of the *FA*, with MOE and MNR providing support but not directly enforcing the *FA*. This means that Ontario residents are effectively barred from applying for *EBR* investigations of alleged *FA* contraventions because the *EBR* only applies to prescribed Ontario ministries. Indeed, since early 2004, ECO staff have advised members of the public that it is no longer possible to file *EBR* investigations of *FA* contraventions, even though the *FA* is listed as a prescribed Act in O. Reg. 73/94 under the *EBR*.

In our 2005/2006 Annual Report, the ECO described the on-going "saga of protocol revision and application" as "an abuse of process" that has deprived residents of their rights and "insulated decision-makers from public concern" about the decline of fish and aquatic resources that are supposed to be protected by the *Fisheries Act*. For our 2006/2007 Annual Report, the ECO requested that MNR provide an update on the work of ARMAC in revising the 2004 Protocol. Because MNR and MOE no longer lead enforcement of the FA under the 2004 Protocol, the ECO did not request an update on these activities.

In its March 2007 report, MNR stated that the 2004 Protocol was being revised to reflect agency staff and public comments received during implementation. MNR indicated it intended to post the revised protocol ("the 2007 Protocol") on the Registry in the spring of 2007. In mid-May 2007, a notice was posted to the Registry for 45 days, but initially did not provide a link to the actual draft document. This was corrected after four days. The Canada-Ontario Fisheries Advisory Board will monitor and update the 2007 Protocol as agency laws, policies and structures evolve.

Protocol for Protecting Fish and Fish Habitat on Provincial Transportation Undertakings

In 2005, MNR, MTO and DFO developed a Protocol for Protecting Fish and Fish Habitat on Provincial Transportation Undertakings. This protocol, which was posted as a proposal notice in February 2006, is intended to facilitate a collaborative approach, and to increase certainty, consistency, efficiency and effectiveness in the protection and restoration of fish habitat when provincial transportation projects are undertaken. The ECO urges MTO to post a decision notice about this protocol now that work on it has been completed and it is available on MTO's web site.

Review of Biomedical Waste Management Rules

In January 2006, the ECO requested an update on the progress of MOE's review of Biomedical Waste Management – Guideline C-4. The ministry responded in March 2007 that a range of stakeholders had been consulted, including the Ministry of Health and Long Term Care and the Ontario Hospital Association. The ministry advised that it is still actively reviewing the guideline, and noted that sensitive and complex issues are involved.

Aggregate Resources Conservation Strategy

In January 2007, the ECO requested an update on the development of a strategy for conserving Ontario's aggregate resources. MNR responded that the ministry remains committed to contributing to an aggregate resources strategy, which would, among other issues, also address conservation. The ministry noted that an essential prerequisite is a thorough understanding of the current state of the resource. As a preliminary step, MNR is working with the aggregate industry on a study of recycling and reuse opportunities for construction aggregates, especially road pavements. A multi-stakeholder advisory committee is overseeing the project, with an expected completion date by the end of 2007.

Environmental Impacts of Transportation

In response to ECO's request for an update, MTO indicated that it is working with other ministries on strategies to reduce the environmental impact of transportation. The ministry states that it has invested $1.3 billion in transit in 2006/2007, and has invested $127 million to establish high occupancy vehicle (HOV) lanes on Highways 403 and 404. These are laudable measures, however, MMAH has not responded to ECO's 2005/2006 Annual Report, which recommended that MTO take the lead with MMAH and MOE and collaborate on a strategy to reduce the environmental impact of the transportation sector in Ontario, hold public consultations on the strategy, and post a strategy on the Environmental Registry. (See pages 28–35 of this Annual Report for more on this subject.)

Population Growth Modeling and Projections

In our 2004/2005 Annual Report, the ECO recommended that MMAH "undertake public consultation on the government's population growth modeling and projections in order to provide a transparent context for land use planning decisions." MMAH responded that this recommendation is being addressed on a broader basis by the government. MMAH stated it does not do growth modeling and projections but, rather, they are done by both the Ministry of Finance (MOF) and the Ministry of Public Infrastructure Renewal (MPIR), as well as by municipalities. Neither MOF nor MPIR are currently prescribed under the *EBR*.

Prescribing the Ministry of Education and Environmental Education

In September 2005, MOE recommended prescribing the Ministry of Education (EDU) for the purposes of consideration of a Statement of Environmental Values that the ministry would create under the *EBR*. In November 2005, MOE posted a proposal to amend O. Reg. 73/94, and MOE advised the ECO that a total of 59 comments were made. As of June 2007, a final decision had not been made and MOE was still "reviewing options for addressing the comments that were received."

In the meantime, MOE and EDU were working on other facets of environmental education. In June 2006, staff in MOE reviewed the 1999 science and technology curricula for grades 1 to 12, and provided detailed comments that included suggestions to incorporate new environmental issues, such as climate change, links between environmental toxins and human health, and the importance of alternate energy sources, into the curricula.

During the summer of 2006, EDU met with stakeholders, including school boards, teacher associations and non-profit organizations, to collate comments received and revise the curricula for grades 1 to 8 and grades 9 and 10. Revisions to the grades 11 and 12 science curricula were under preparation in May 2007.

In November 2006, the Ministry of Education released the revised science and technology curricula for grades 1 to 8 and grades 9 and 10 for review. Overall, MOE stated its reviewers were quite impressed with the quality and significance of the environment-related subject matter in the curricula.

On March 1, 2007, the Ministers of Education and Environment announced the creation of an independent Curriculum Council to give a stronger voice to community leaders and education experts in the curriculum review process. The Council is chaired by Dr. Dennis Thiessen, and its first assignment was to review the teaching of environmental education in Ontario. Dr. Roberta Bondar was appointed chair of the working group on environmental education. This group delivered its report, "Shaping Our Schools, Shaping Our Future" to the Curriculum Council in June 2007. On June 22, 2007, the government committed to integrating environmental education into all subjects in all grades; developing a new optional Grade 11 course focused on environmental education, and creating and publishing an environmental education policy by the fall to ensure high quality and relevant learning. In light of these recent announcements related to environmental education in Ontario, the ministry is currently revisiting options for addressing the public comment received in response to the November 2005 Environmental Registry posting by MOE.

Please see Section 9 (page 282) of the Supplement to this Annual Report for other progress related to prescribing new or existing ministries for laws, regulations or processes under the *EBR*.

Ministry Cooperation

The ECO and staff rely upon cooperation from Ontario ministries to carry out the mandate of the ECO. We are in frequent contact with staff of the prescribed ministries and agencies with requests for updates and other information. Clear, complete and prompt responses from ministries allow the ECO to conduct reviews of the ministries' environmentally significant decisions in an efficient and straightforward manner. Section 58 of the *Environmental Bill of Rights* requires the ECO to include in our Annual Report to the

Ontario Legislature a statement on whether or not prescribed ministries have cooperated on requests by the ECO for information.

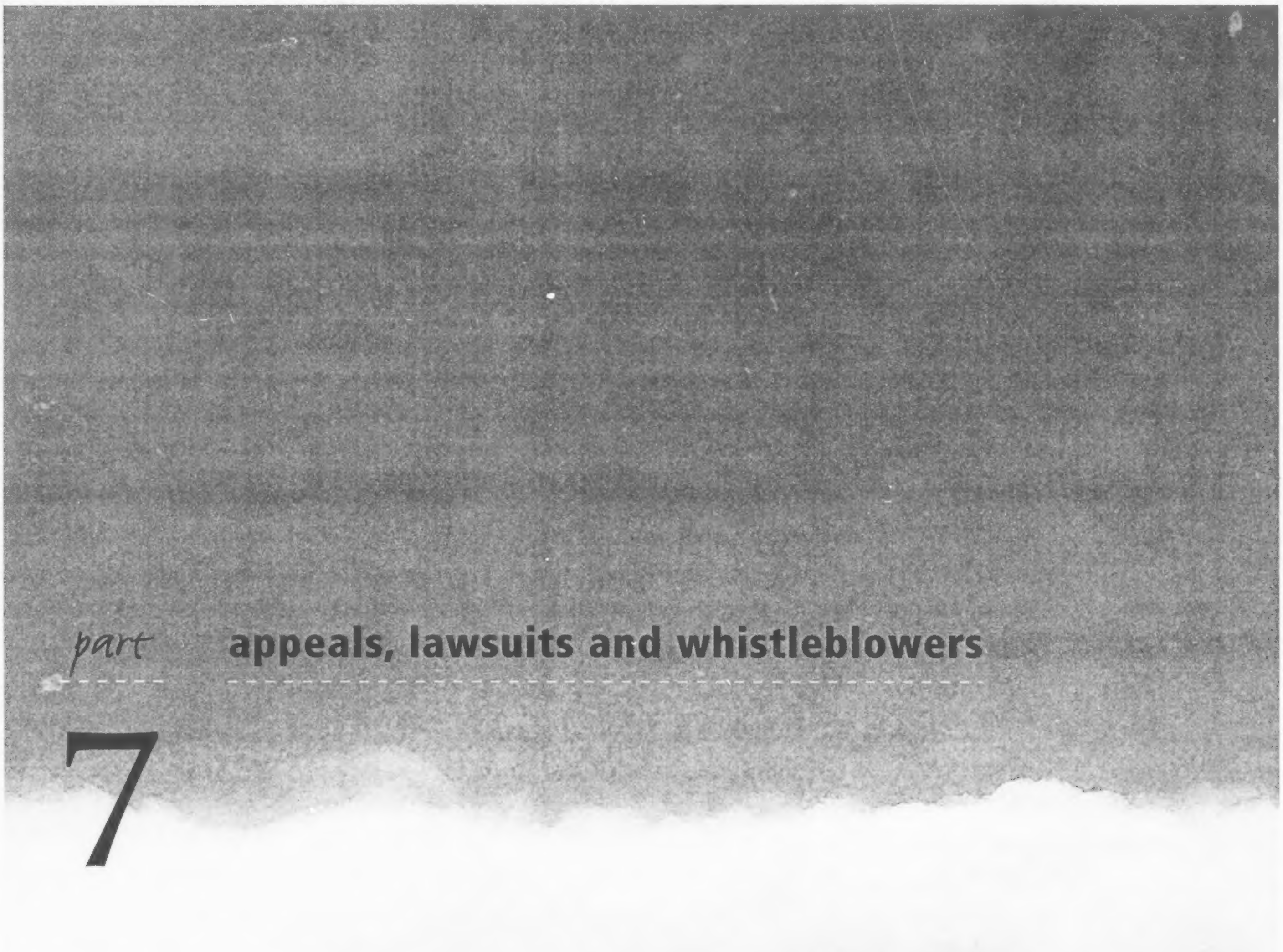
The thirteen prescribed ministries and one agency – the Technical Standards and Safety Authority – each have one staff person who is designated as an *EBR* coordinator or contact. Most of the day-to-day interaction between the ECO and the ministries occurs via these coordinators, who play a pivotal role in facilitating effective *EBR* implementation. Among other things, these individuals are responsible for coordinating the ECO's access to documents needed for reviewing ministry and agency decisions posted on the Registry. For the *EBR* coordinators at the Ministry of the Environment (MOE) and the Ministry of Natural Resources (MNR), this can be a significant workload, and the ECO is pleased to report that the required documents have been provided promptly during the past year.

Routine requests to ministries for information generally were met expeditiously during this reporting period. In addition, several ministries – notably MOE, MNR and the Ministry of Municipal Affairs and Housing (MMAH) – were proactive in advising ECO staff of upcoming postings to the Environmental Registry. However, some requests were not responded to in a timely way. For example, the response to a request to the Ministry of Northern Development and Mines (MNDM) submitted in February 2007 (for clarification of a response to an *EBR* application for review) was not received until late April 2007.

In April 2007, the ECO released a special report ("Doing Less with Less") describing a 15-year pattern of inadequate resourcing of MOE and MNR. To research this issue, the ECO wrote to both ministries in October 2006, advising them of the scope of the topic, and noting that ministry staff would be receiving written inquiries and phone calls from our office. The letters also requested annual divisional plans or business plans, as well as any major program evaluations or reviews, with a suggested delivery date of late November 2006.

The response of the ministries was variable and very guarded. MOE submitted several binders of general budget and staffing summaries by November 22, 2006. MOE also submitted a binder of program-related documents in mid-December, but these were composed of, primarily, excerpts from the Auditor General's Annual Reports, and contained no new information. The MOE explained that there were no internal divisional plans or annual reports available to share with the ECO. The ECO did not receive answers to a set of additional staffing-related questions, despite submitting them to several MOE staff by e-mail and phone.

MNR professed a desire to cooperate, but did not provide any documentation until mid-January 2007, and only after repeated delays. At that point, the ministry provided a number of recent program plans. In December 2006, MNR and ECO came to an arrangement allowing ECO staff to phone MNR program staff directly (rather than indirectly, through a coordinating officer). When contacted, MNR program staff were both professional and knowledgeable, and represented their ministry ably.



part 7

appeals, lawsuits and whistleblowers

Ontarians have the right to comment on environmentally significant government proposals, ask for a review of current laws, or request an investigation if they think someone is contravening an environmental law. The *Environmental Bill of Rights* also provides Ontarians with several other legal tools including:

- the right to request appeals of certain ministry decisions;
- the right to sue for damages for direct economic or personal loss because of a public nuisance that has harmed the environment;
- the right to sue if someone is breaking, or is about to break, an environmental law that has caused, or will cause, harm to a public resource; and
- the right to employee protection against reprisals for reporting environmental violations in the workplace and for exercising the rights available to them under the *EBR*.

Status of Appeals

The *EBR* gives Ontarians the right to apply for leave to appeal ministry decisions to issue certain instruments, such as the permits, licences or certificates of approval granted to companies or individuals. The person seeking leave to appeal must apply to the proper appeal body, such as the Environmental Review Tribunal (ERT), within 15 days of the posting of a decision notice on the Environmental Registry. They must show that they have an "interest" in the decision, that no "reasonable" person could have made the decision, and that it could result in significant harm to the environment.

During the 2006/2007 reporting period, concerned residents and environmental groups filed 11 leave to appeal (LTA) applications involving approvals issued by the Ministry of the Environment. (Further details on these applications are provided in the record of 2006/2007 leave to appeal applications found on pages 258–279 in the Supplement to this report.) The MOE instruments that were appealed included permits to take water (PTTWs) and certificates of approval (Cs of A). In three cases, leave was granted. Two pairs of LTA applications (one set filed by Northwatch, and the other set filed jointly by Clean Air Bath and several other groups and individuals) were related to air and waste Cs of A issued to facilities that would process and burn wastes or waste by-products. Northwatch chose to withdraw its appeal on the two instruments in January 2007 after its staff reported encountering difficulties and serious delays in obtaining information from MOE related to its applications. The two LTA applications by Clean Air Bath *et al.*, related to Lafarge instruments, were granted; these decisions are reviewed below.

In two cases, LTA applications prompted MOE and the other parties to begin settlement discussions prior to adjudication by ERT. In both cases, the parties elected to settle their disputes before ERT decided on whether to grant or deny leave, and the applicants were able to secure revisions to MOE approvals that addressed some of their concerns about them.

As noted in Table 1 below, four LTA applications were pending as of March 31, 2007. Two leave to appeal applications by Clean Air Bath and a group of other applicants related to Lafarge instruments were pending at the end of March, and ERT granted leave in early April. These are reviewed below. In March 2007, a third LTA application was filed by residents living near the Bayview Crematoria in Burlington, involving a C of A issued to the operation. The ERT ruled in May 2007 that it did not have jurisdiction because the LTA application was filed after the 15-day period for filing applications had ended. A fourth application related to a Certificate of Property Use was pending as of March 31, 2007, and ERT issued its decision denying the LTA application on April 10, 2007 (this decision also is reviewed below).

ERT appeal hearings related to several successful LTA applications described in previous ECO annual reports were also concluded or settled during the reporting period. For example, Haldimand Against Landfill Transfers (HALT), the Six Nations and local residents challenged approvals issued to the Edwards Landfill in 2005 (see the ECO's annual report 2004/2005, pages 17–19). The appeal on this dispute was settled in November 2006. In a similar case, the County of Grey and two other municipalities withdrew their appeals related to a PTTW after settling in October 2006 with the proponent, Gibraltar Springs, and the MOE.

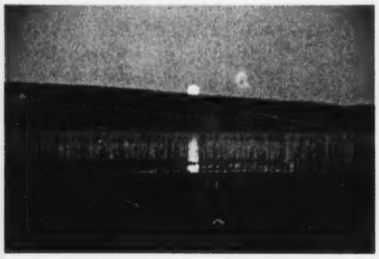


Table 1 | Leave to Appeal Application Results (as of March 31, 2007)

Leave granted	3
Leave denied	0
LTA decision pending	4*
Settled prior to adjudication	2
Withdrawn prior to adjudication	2

* All were decided in early April 2007 and some are discussed below.

MOE instruments

Three "instrument holder" notices of appeal for MOE instruments were posted on the Environmental Registry during the reporting period. The *EBR* requires the ECO to post notices of these appeals, which are launched by companies or individuals who were the subject of a remedial order, were denied an approval, or were unsatisfied with its terms and conditions. The notices alert members of the public who may then decide to become involved with such an appeal as provided by s. 47 of the *EBR*.

MMAH instruments

During the reporting period, the ECO posted two notices of appeal for Ministry of Municipal Affairs and Housing instruments on the Registry. Residents, companies, or municipalities can launch these appeals in relation to decisions made by MMAH under the *Planning Act* to approve a municipality's official plan, an official plan amendment, and other approvals in areas of Ontario where no official plan is in place.

Bath residents challenge MOE approvals issued to Lafarge

In late December 2006, MOE issued two Cs of A to Lafarge Canada Inc. stating the company is permitted to test burn alternative fuels at its cement plant in Bath, west of Kingston. The C of A for the waste site, issued under s. 39 of the *Environmental Protection Act (EPA)*, allows Lafarge to import and burn up to 100 tonnes per day of solid non-hazardous waste materials (such as tires, animal meal, plastics, shredded tires, solid shredded materials, and pelletized municipal waste) as an alternative fuel in the manufacturing of cement at Lafarge's Bath plant. The burning of used tires and other municipal wastes will eventually allow Lafarge to replace about 30 per cent of the fossil fuel currently used at its Bath plant. The waste C of A also allows Lafarge to create a waste site capable of storing up to 1,000 tonnes of municipal waste at a time. Under its waste C of A, Lafarge committed to ensuring that the wastes received at the site are either not recyclable or are surplus to the capacity of Ontario recycling markets.

The C of A (air) issued under s. 9 of the *EPA* sets out monitoring requirements to detect toxins that might be released into the environment. For example, Lafarge is required to continuously monitor emissions and to publicly report those results. In addition, MOE asserts that the facility will have to meet strict air emission limits based on Ontario's A-7 air pollution guideline.

In a related development, the Minister of the Environment proposed to temporarily prohibit the burning of tires for a period of two years, even though no facility in Ontario is currently burning tires as an alternative fuel. MOE states that this suspension, posted on the Registry the same day as the two Cs of A issued to Lafarge Canada, will give ministry scientists and other experts the opportunity to evaluate the environmental performance of facilities that convert tires to energy. If the results are not complete, this temporary suspension will be extended to three years.

In early January 2007, a number of local residents and representatives of a number of environmental groups (including Clean Air Bath, the Loyalist Environmental Coalition, and Lake Ontario Waterkeeper) applied for leave to appeal MOE's decisions. The grounds for seeking LTA on the section 9 air approval included arguments that:

1. it was unreasonable for the Director to issue the approval given that MOE has not obtained information on local air quality, such as baseline air quality data; and
2. the Director failed to properly take into account the ecosystem approach, promote resource conservation, and apply the precautionary principle, as required by MOE's Statement of Environmental Values.

(For further detail on the grounds, see the ECO's Annual Report Supplement, at pages 272–273.)

In early April 2007, ERT granted leave to most of the applicants with respect to the two Cs of A. The ERT found that the successful applicants met the first requirement of the LTA test on the grounds that it appears that there is good reason to believe that no reasonable person could have made the decisions to issue the section 9 air approval for the following reasons:

- The Director did not assess the potential cumulative ecological consequences of approving the C of A application. The ERT noted that the mere fact that the C of A complies with O. Reg. 419/05 is not sufficient to establish that the decision to issue the C of A is reasonable, or to establish that MOE has taken an ecosystem approach in making its decision, as required by MOE's SEV.
- The Director did not follow the direction in MOE's SEV to apply a precautionary approach. The ERT noted that the Cs of A were approved in the face of uncertainty by MOE about the environmental risk of the permitted activity (as evidenced by MOE's Notice of Proposal for a Regulation to ban the incineration of tires).
- The Director did not turn his mind to the potential effect of the decision on the common law rights of local landowners.
- The Director's decision exposes the residents of Bath to the effects of an activity (i.e., the incineration of tires) that the MOE is proposing to ban in the rest of the province, without considering whether such a decision could produce inconsistent environmental effects between communities.

The ERT also found that the applicants provided sufficient information to establish that the Director's decision to issue the C of A could result in significant harm to the environment. The ERT noted that, despite the fact that MOE has concluded that the facility is able to operate in accordance with O. Reg. 419/05, MOE regulations do not incorporate consideration of cumulative effects, total ecosystem loading, synergistic effects, bioaccumulation or complete standards for high priority contaminants. In addition, the documentation supporting the C of A application did not include baseline information for air and water quality. The ERT stated that the applicants could appeal the decision in its entirety, and they were not limited to the grounds listed in their LTA applications. As of June 2007, this matter is on-going. A preliminary ERT hearing was scheduled to commence in September 2007.

Another nine applicants had also applied for leave to appeal the related C of A (Air) issued to Lafarge, but did not specifically request leave to appeal the waste site C of A. Nonetheless, the ERT considered their requests for leave to appeal both of the related Cs of A. The ERT denied leave to these nine applicants because they did not establish that their concerns "have a real foundation sufficient to give them the right to pursue them through the appeal process," and thus they did not meet the s. 41 leave to appeal test in the *EBR*.

Niagara Falls resident challenges certificate of property use

In February 2007, a Niagara Falls resident undertook the first leave to appeal application regarding an MOE Director's decision to issue a Certificate of Property Use (CPU) for a portion of a brownfield property located in that city. A CPU is an instrument issued by the MOE to prescribe certain terms in connection with property use or redevelopment; often, MOE limits use of the property or prescribes the continued operation of certain remedial equipment. The applicant sought leave to appeal on several grounds, including:

- there has not been adequate testing of the air, soil and water at the site or off-site;
- there has been no information provided to support the conclusion that the soils across the entire site are medium-fine textured; and
- the CPU did not contain a requirement for a Soil Management Plan (SMP).

In early April 2007, the ERT denied the application, noting that the applicant failed to present convincing evidence that the decision of the Director was unreasonable. With respect to the applicant's argument that MOE had failed to implement adequate testing of the air, soil and water at the site or off-site, the ERT concluded that the applicant did not provide adequate evidence about the inadequacies and deficiencies in the CPU. No evidence was provided as to what environmental testing should have been conducted at the site compared to what is required under the legislative and regulatory scheme under the *EPA* and its regulations, "or more generally as to what is required to appropriately protect the environment."

With respect to the applicant's argument that the CPU did not contain a SMP and would not protect workers and the community during the remediation process, the ERT agreed with the MOE Director and with Cytec that there are such provisions within the CPU, and that additional reviews or approvals are required by the Director with respect to soil management. The ERT went on to note that it "cannot, at this stage, determine the appropriateness or adequacy of those provisions other than to note the fact that they speak to the issues at hand." The onus was on the applicant to identify how the SMP provisions were "sufficiently problematic" to meet the *EBR* test for leave to appeal, but the ERT concluded "no evidence to that effect" was presented. The ERT also noted that the concerns raised by the applicant with respect to the risk assessment were not valid grounds since leave to appeal is only available with respect to the CPU itself.

Public Nuisance Cases

Prior to 1994 when the *EBR* came into force, claims for public nuisances had to be brought by the Attorney General or with leave of the Attorney General. Today, under s. 103 of the *EBR*, someone who has suffered direct economic loss or personal injury as a result of a public nuisance can bring forward a claim and no longer needs the approval of the Attorney General. No new cases including public nuisance as a cause of action came to the ECO's attention during the reporting period, although one case launched in 2001 continues to move through the courts.

In previous annual reports, the ECO has described the environmental class action related to the Port Colborne Inco facility, *Pearson v. Inco Limited et al.* In March 2001, Wilfred Pearson launched a class action lawsuit against Inco Limited, the City of Port Colborne, the Regional Municipality of Niagara, the District School Board of Niagara, and the Niagara Catholic District School Board. Section 103 of the *EBR* is listed as one cause of action.

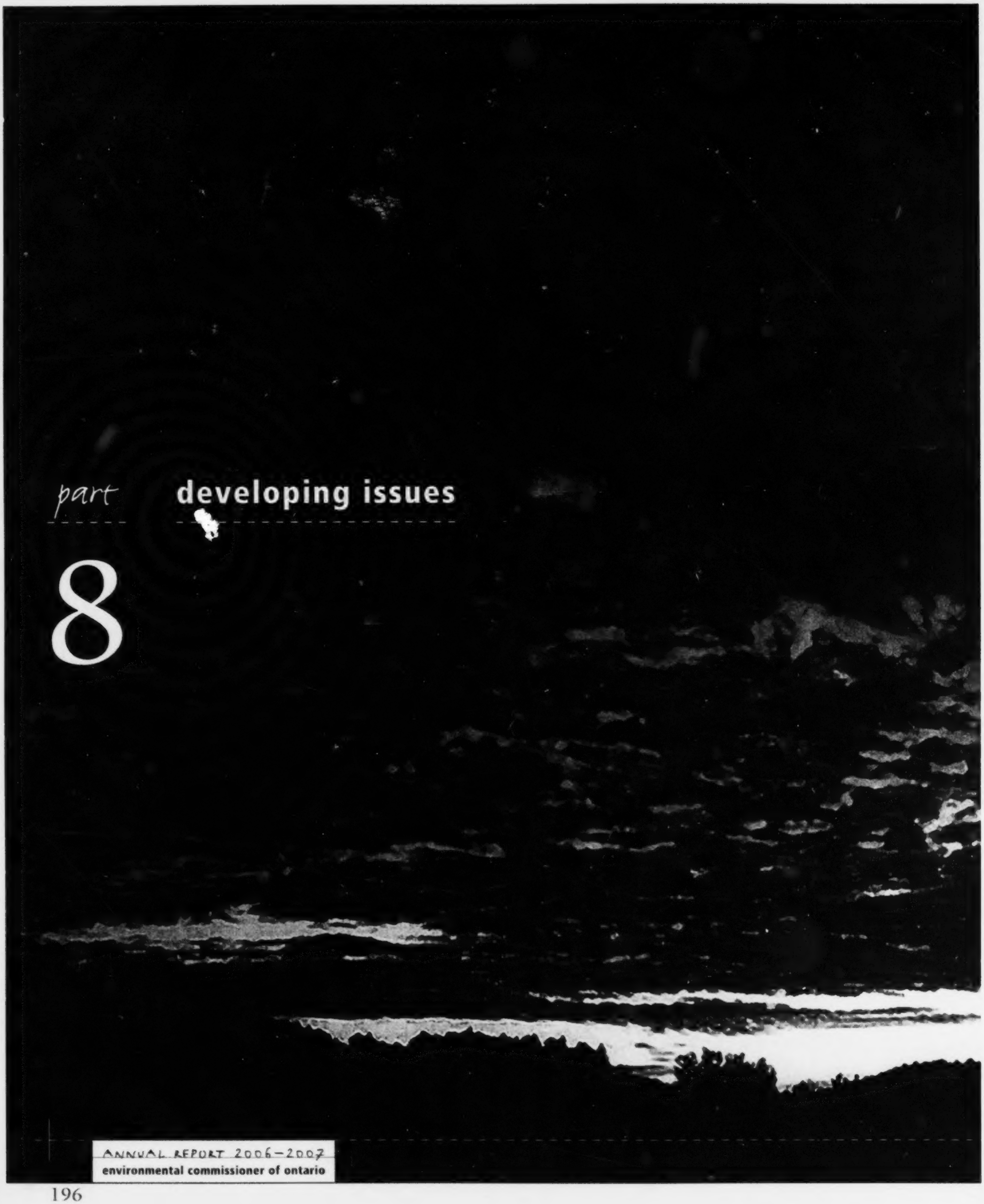
As reported in our 2005/2006 annual report, the Ontario Court of Appeal (OCA) overturned the two lower court rulings that refused to certify a class of property owners. In doing so, the OCA determined that when environmental class litigants properly frame their claims, they can be certified, notwithstanding the earlier precedents that appeared to limit such claims. On June 29, 2006, the Supreme Court of Canada rejected Inco's application for leave to appeal, which means that the *Pearson* case can now proceed to trial. The trial is scheduled to take place in September 2008, in Welland, Ontario. The ECO will provide updates in future annual reports.

The Right to Sue for Harm to a Public Resource

The *EBR* gives Ontarians the right to sue if someone is violating, or is about to violate, an environmentally significant Act, regulation or instrument, and has harmed, or will harm, a public resource. To date, the only court action brought under the Harm to a Public Resource provisions of the *EBR*, for which notice has been provided to the ECO, is the proceeding started in 1998 by the Braeker family against the Ministry of the Environment and Max Karge, an owner of an illegal tire dump. Unfortunately, civil actions often take a long time to be resolved if there is no settlement, and the Braeker action is on-going. The ECO will continue to monitor this case, and will report on its ultimate conclusion.

Whistleblower Rights

The *EBR* protects employees from reprisals by employers if they report unsafe environmental practices of their employers or otherwise use their rights under the *EBR*. There were no whistleblower cases in this reporting period. Since the *EBR* was established, no complainants to the Ontario Labour Relations Board have invoked this right.



part 8

developing issues

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As part of our annual report, ECO often identifies "developing issues" – issues that may be escaping broader public attention but that have the potential for significant environmental impacts, and thus deserve greater prominence and stronger government effort. This year ECO has chosen to focus on the topic of flooding hazards. Whether to the natural environment or the built environment, flooding impacts are of enormous significance. Meeting the challenges posed by climate change demands a shift in thinking by the various levels of government and the water control and flood plain development issues.

The following is a summary of a more detailed analysis contained in Section 10 of the supplement to this annual report.

Flooding Hazards: Prevent and Mitigate, or Compensate and Rehabilitate?

Millions of dollars have been spent on flood prevention measures to eliminate or mitigate the risks posed to public health and safety, damage to property, and the effects of flooding on the environment. However, flooding events are still common and compensation costs continue to escalate. In addition, floodwaters are often highly polluted with chemicals from flooded industries and households, sewage from overflowing septic systems and sewage treatment plants, and sediment from fields. Rushing floodwaters can erode stream banks and scour streambeds. Fish and other aquatic organisms are killed and their habitats are destroyed.

Flood management responsibilities are distributed across all three levels of government (federal, provincial and municipal), as well as delegated to Conservation Authorities (CAs.) A core responsibility – defining and updating the regulations, policies and guidelines on which municipalities, CAs, engineers, developers and the public rely to protect life, property and the environment – is distributed across several provincial ministries. These ministries must balance the costs of prevention and mitigation against the potential for loss of life, and the costs to repair and rebuild homes, businesses and infrastructure, and rehabilitate streams and habitats.

An ECO review of some of the current flood prevention and mitigation measures that are currently employed by the Ministry of Municipal Affairs and Housing (MMAH), Ministry of Natural Resources (MNR) and Ministry of the Environment (MOE) suggests that strong development controls and well-designed stormwater management systems can significantly reduce the risk of flooding. However, exceptions to development controls, aging and/or inadequate stormwater management systems and flood control structures, and lack of support for innovative technologies and funding for flood management activities are increasing the risk that future rainfall events will overwhelm existing flood prevention and mitigation measures. As evidence mounts that storms are becoming more severe due to climate change, the ECO believes that bold pro-active steps are required to reduce the risk of significant flooding.

Historical Flooding Events Shape Ontario's Flood Management Policies

In Ontario, two rainfall events, in particular, have shaped Ontario's overall flood management policies:

- In 1954, Hurricane Hazel swept through the Greater Toronto Area, killing 81 people, leaving 1,868 families homeless, destroying 20 bridges, and washing away numerous buildings across the region and crops in Holland Marsh. About 210 millimetres (8.3 inches) of rain fell in 12 hours on already saturated ground.
- In 1961, heavy rains falling during the "Timmins Storm" caused a small creek in Timmins to overflow its banks, destroying roads and homes, and undercutting foundations. Five people died. About 193 mm (7.6 in) of rain fell in 12 hours.

Some Effective Measures That Reduce the Flooding Hazard

MMAH provincial policy statement, 2005

One of the most effective ways of preventing flood damage is to prohibit development and site alteration in areas subject to flooding hazards. According to the MMAH's 2005 Provincial Policy Statement (PPS), issued under the *Planning Act*, development is defined to include creation of a new lot, a change in land use, or the construction of buildings and structures, requiring approval under the Act. Site alteration includes grading, placement of fill and excavation. Under the PPS, municipalities "shall generally" direct development away from the following flooding hazard areas:

- areas adjacent to the shorelines of the Great Lakes-St. Lawrence River systems and large inland lakes that would be inundated in a 100-year flood, (i.e., a flood that has a one chance in one hundred of occurring or being exceeded in any particular year); and
- areas, called flood plains, adjacent to rivers, streams and small inland lakes that would be flooded by the greatest of (a) rainfall experienced during a major storm, such as Hurricane Hazel or the Timmins Storm, in the specific watershed, (b) the 100-year flood, or (c) a previous flood caused by ice jams.

Conservation authorities – Regulations prohibit development near waterbodies and wetlands

A Conservation Authority is also able to prevent and/or limit development, if, in its opinion, the development interferes with the control of flooding. Development, under the *Conservation Authorities Act (CAA)*, includes increasing the size of a building, grading, excavation and the placement of fill. Each CA, in its 'development' regulation, has identified the rivers, streams, lakes, wetlands, valleys and shorelines, including the flooding hazard areas identified under the 2005 PPS, where development is prohibited unless the CA has approved it.

MOE – Urban stormwater management

Effective management of urban runoff can reduce flooding. MOE's "Stormwater Management Planning & Design Manual" (SWMP, 2003) states that runoff from post-development sites must not exceed pre-development levels for storms with return periods ranging from two to 100 years. According to SWMP, new development projects should manage runoff from average rainfall events using a variety of methods, such as directing runoff onto lawns, backyard swales and road gutters; and from larger events by directing runoff down streets, to large storm sewers, storage ponds and other structures before being discharged to a waterbody.

Opportunities to Reduce the Flooding Hazard

Development and site alteration in flood fringe areas

The flood fringe is the area within the flooding hazard area where the water depth and velocity are lower than elsewhere within the area. The 2005 PPS allows some types of development (e.g., new residential housing and site alteration) in the flood fringe, if safety and flood proofing measures that protect life and property are used. However, these measures do not guarantee that areas within the flood fringe are safe from being flooded. When municipalities and/or CAs refuse to approve development and/or site alteration in the flood fringe, they often face considerable opposition because of economic interests or prior development in the area.

Since many older communities previously allowed homes and businesses to be sited in flooding hazard areas, the 2005 PPS allows municipalities to designate these areas as Special Policy Areas (SPAs) subject to provincial approval. SPAs provide municipalities with a way of controlling the nature and extent of development and site alteration activities to reduce the risk that changes will increase flooding in the area.

Managing runoff and unrestrained use of impervious materials

Managing runoff in older parts of cities is often very difficult using conventional methods. Precipitation falling on roofs, parking lots and roads built of impervious materials, such as asphalt, concrete, metal, brick and/or stone, becomes runoff that must be managed rather than infiltrating into the ground. Replacing agricultural lands with high-density commercial uses can increase surface runoff by 250 per cent and peak stream flows by 200 to 500 per cent. Although the SWMP encourages management of runoff locally, it does not encourage the use of porous materials for parking lots, walkways, etc., and other innovative methods of handling runoff on-site, such as green roofs. Furthermore, urban streets are often too flat to handle runoff or have low spots resulting in local flooding, and many homes and businesses have little or no pervious areas.

Aging flood control structures and inadequate stormwater systems

About one-quarter of Ontario's 2,400 dams are more than 50-years-old and in need of maintenance and repair. Ruptures in older stormwater systems resulting in local flooding and street cave-ins are increasingly common. One-fifth of Toronto's storm sewer system is more than 80-years-old, and some stormwater systems, such as those found in parts of Peterborough, were not designed to handle more than a one to two year return storm.

Funding of flood management initiatives cut in the 1990s

Between the 1950s and early 1990s, the federal and/or provincial governments funded various flood management initiatives, including the building, maintenance and operation of dams. They also funded the preparation of flood plain maps, which are used by municipalities to identify their flooding hazard areas. However, in the 1990s, provincial transfer payments to the CAs for flood management services, such as operating and maintaining dams, were cut by 87 per cent. Since 2000, the payments have remained flat at $7.6 million per year, less than one-half of the amount that Conservation Ontario has calculated is owed to CAs, according to its funding agreement with MNR. MNR also eliminated funding support for enforcement of *CAA* regulations and reviewing municipal plans.

Adapting to Climate Change

Flood management, including flood plain mapping, dams, stormwater systems, and municipal plans, are based on historical rainfall and flooding events. However, under the climate change scenario, historical events may be a poor predictor of future events. More frequent and intense precipitation events in Ontario are expected and anecdotal evidence suggests that municipalities have already experienced such events:

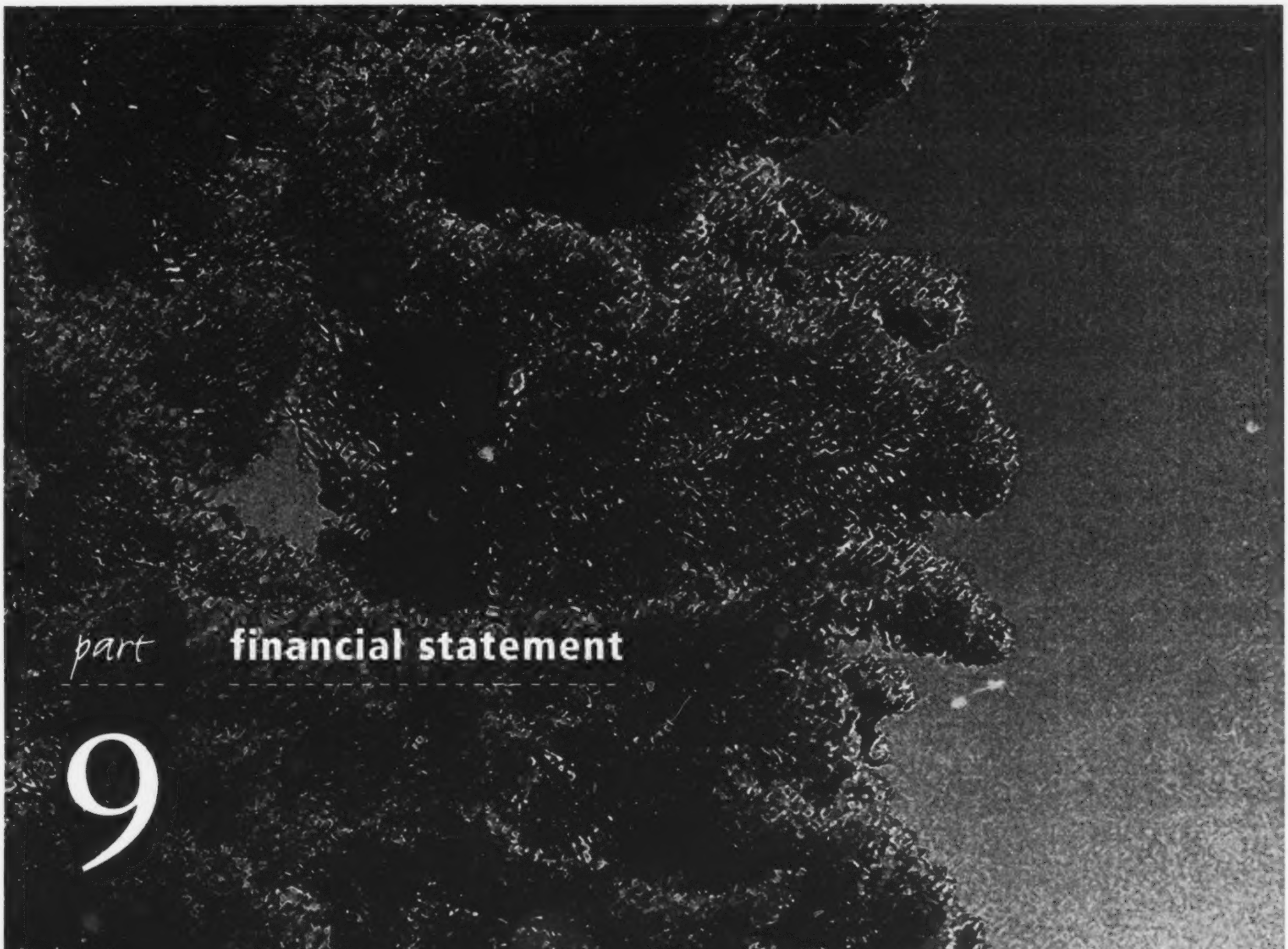
- Since 1996, three 100-year storms have hit the Ottawa area and the village of Carp to the west of the city.
- In 2002, the "49th Parallel Storm" in northwestern Ontario exceeded the rainfall depth of the Timmins Storm by a factor of at least two.
- In 2002, Peterborough experienced a 100-year storm, and just two years later, a 290-year storm in 2004.
- In 2004, Hurricane Frances dumped up to 150 mm of rain in 12 hours on eastern Ontario.
- On August 19, 2005, a 100-year storm dumped almost 175 mm of rain in less than one hour across the northern sections of the City of Toronto and York Region.

By 2090, Environment Canada estimates that the 100-year storm will be experienced every 50 years, based on a projected 15 per cent increase in rainfall across Ontario. Infrastructure with long service lives, such as dams, combined sewer systems and stormwater systems, are at risk of experiencing storms that exceed their capacity to handle the floodwaters. A recent climate change study included a recommendation that designers of future stormwater structures should assume storms that are 15 per cent larger than those experienced currently.

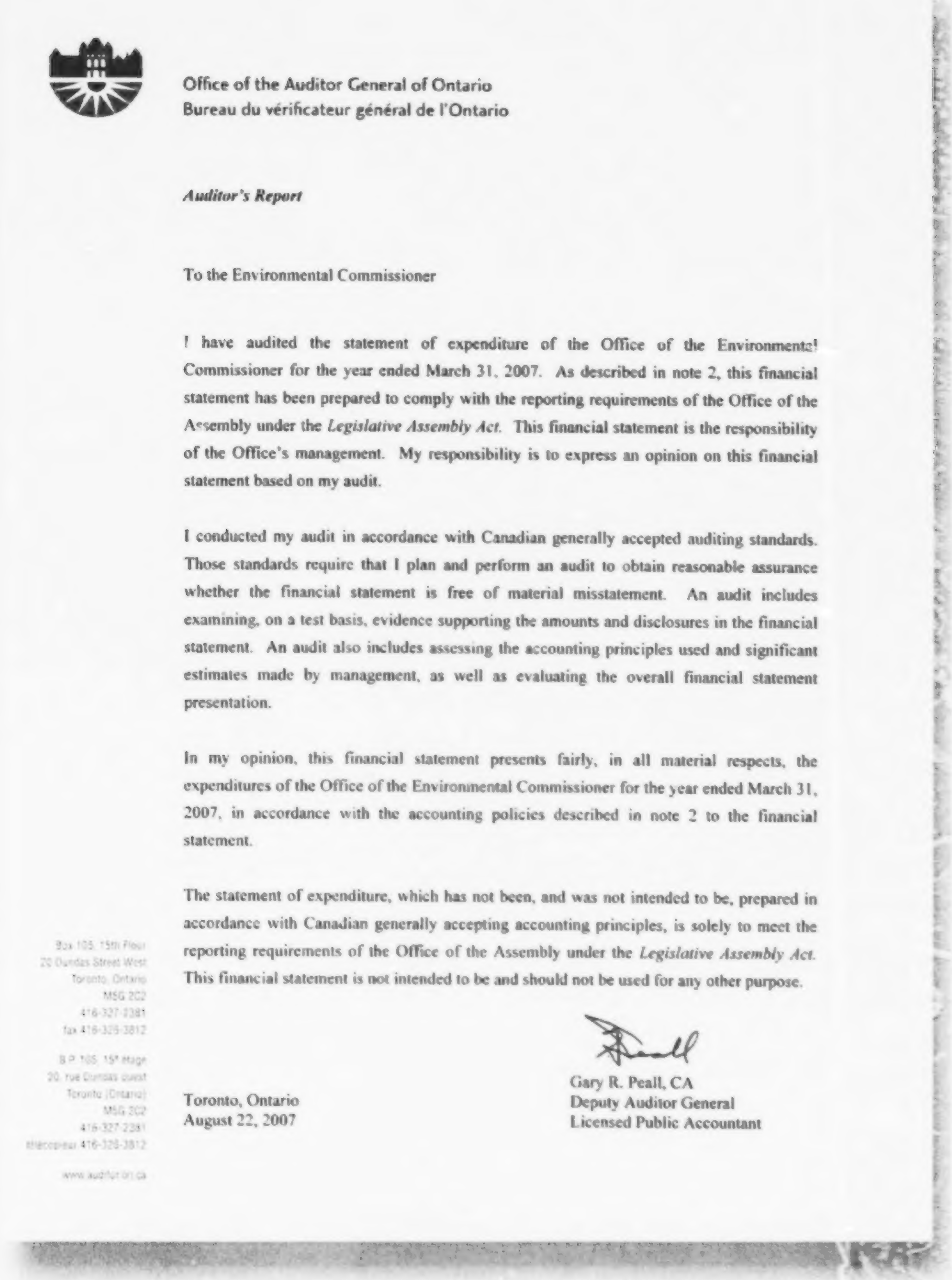
An increasing number of experts have begun to question the appropriateness of planning policies that allow development and site alteration in flooding hazard areas, and to raise concerns about aging infrastructure. Some are also questioning the appropriateness of relying solely on historical storm events to design infrastructure. Meanwhile, major infrastructure decisions are still being made based on historical data, and municipalities and CAs are struggling to prohibit development and site alteration in flood prone areas. The ECO urges MOE, MNR and MMAH to update current regulations, policies and guidelines so that today's decisions don't add to an existing legacy of infrastructure and development that will not be able to handle or withstand projected flood events.

(For additional information, refer to the Supplement to this report, pages 292–296.)

For ministry comments see page 220.



part 9 financial statement



Office of the Auditor General of Ontario
Bureau du vérificateur général de l'Ontario

Auditor's Report

To the Environmental Commissioner

I have audited the statement of expenditure of the Office of the Environmental Commissioner for the year ended March 31, 2007. As described in note 2, this financial statement has been prepared to comply with the reporting requirements of the Office of the Assembly under the *Legislative Assembly Act*. This financial statement is the responsibility of the Office's management. My responsibility is to express an opinion on this financial statement based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, this financial statement presents fairly, in all material respects, the expenditures of the Office of the Environmental Commissioner for the year ended March 31, 2007, in accordance with the accounting policies described in note 2 to the financial statement.

The statement of expenditure, which has not been, and was not intended to be, prepared in accordance with Canadian generally accepting accounting principles, is solely to meet the reporting requirements of the Office of the Assembly under the *Legislative Assembly Act*. This financial statement is not intended to be and should not be used for any other purpose.

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Toronto, Ontario
August 22, 2007

Gary R. Peall, CA
Deputy Auditor General
Licensed Public Accountant

Office of the Environmental Commissioner

Statement of Expenditure

For the Year Ended March 31, 2007	2007	2006
Salaries and wages	$ 1,084,899	$ 1,142,240
Employee benefits (Note 4)	$ 199,063	$ 240,809
Transportation and communication	$ 71,124	$ 72,982
Services	$ 565,496	$ 518,683
Supplies	$ 108,318	$ 34,249
	$ 2,028,900	$ 2,008,963

See accompanying notes to financial statement.

Approved:

Environmental Commissioner

Office of the Environmental Commissioner

Statement of Expenditure

For the Year Ended March 31, 2007

1. Background

The office of the Environmental Commissioner commenced operation May 30, 1994. The Environmental Commissioner is an independent officer of the Legislative Assembly of Ontario, and promotes the values, goals and purposes of the *Environmental Bill of Rights, 1993, (EBR)* to improve the quality of Ontario's natural environment. The Environmental Commissioner also monitors and reports on the application of the EBR, participation in the *EBR*, and reviews government accountability for the environmental decision making.

2. Significant Accounting Policies

Bases of Accounting

The Office follows the basis of accounting adopted for the Office of the Assembly as required by the *Legislative Assembly Act* and accordingly uses a modified cash basis of accounting which allows an additional 30 days to pay for expenditures incurred during the year just ended. This differs from Canadian generally accepted accounting principles in that for example liabilities incurred but unpaid within 30 days of the year end are not recorded until paid, and expenditures for assets such as computers and office furnishing are expensed in the year of acquisition rather than recorded as fixed assets and amortized over their useful lives.

3. Expenditures

Expenditures are paid out of monies appropriated by the Legislative Assembly of Ontario.

Certain administrative services are provided by the Office of the Assembly without charge.

4. Pension Plan

The Office of the Environmental Commissioner provides pension benefits for its permanent employees (and to non-permanent employees who elect to participate) through participation in the Ontario Public Service Pension Plan (PSPF) which is a multiemployer plan established by the Province of Ontario. As the Office has insufficient information to apply defined benefit plan accounting, the pension expense represents the Office's contribution to the Plan during the year, which was $77,173 (2006–$80,536) and is included in employee benefits.

The cost of post-retirement non-pension benefits were paid by the Ministry of Government Services and are not included in the statement of expenditure.

5. Lease

The Office has a lease agreement with its landlord for its current premises expiring on February 28, 2013. The minimum lease payments for the remaining term of the lease are as follows:

2007/08	$ 187,000
2008/09	219,400
2009/10	219,400
2010/11	219,400
2011/12	219,400
2012/13	201,100
	$ 1,265,700

Public Sector Salary Disclosure for 2006

Environmental Commission

Surname	Given Name	Position	Salary Paid	Taxable Benefits
McRobert	David	Senior Policy Analyst/Counsel	$ 126,606.46	$ 217.54
Miller	Gordon	Environmental Commissioner	$ 136,245.62	$ 243.41

2006/07 ECO Recommendations

Recommendation 1

The ECO recommends that MNR significantly speed up the process of wetland identification and evaluation and ensure that Provincially Significant Wetlands are incorporated into municipal official plans.

Recommendation 2

The ECO recommends that MMAH amend the Provincial Policy Statement to prohibit new infrastructure such as highways in Provincially Significant Wetlands unless there are no reasonable alternatives and it has been demonstrated that there will be no negative impacts on their ecological functions.

Recommendation 3

The ECO recommends that the provincial government reconcile its conflicting priorities between aggregate extraction and environmental protection. Specifically, the province should develop a new mechanism within the ARA approvals process that screens out, at an early stage, proposals conflicting with identified natural heritage or source water protection values.

Recommendation 4

The ECO recommends that MMAH work with MPIR to increase the GGH Plan's intensification and density targets above existing business-as-usual development targets.

Recommendation 5

The ECO recommends that MNDM reform the *Mining Act* to reflect land use priorities of Ontarians today, including ecological values.

Recommendation 6

The ECO recommends that MNR reform the *Public Lands Act* to create a planning system that provides MNR with the tools to better protect ecological values on all Crown lands.

Recommendation 7

The ECO recommends that MOE develop a comprehensive, mandatory, province-wide road salts management strategy to ensure aquatic and terrestrial ecosystems are protected from chlorides.

Recommendation 8

The ECO recommends that MNR improve the rehabilitation rates of Ontario pits and quarries by introducing stronger legislation with targets and timelines, by applying up-to-date rules to grandparented licences, and by further strengthening the ministry's own field capacity for inspections.

Recommendation 9

The ECO recommends that MOE and OMAFRA develop quality standards that support land application of stable "pathogen-free" sewage biosolids.

Recommendation 10

The ECO recommends that, where new emitters are seeking entry into heavily burdened airsheds, MOE implement measures to minimize cumulative effects, for example, by obtaining emission offsets and speeding up the process of updating older Cs of A in that airshed.

Appendix – Ministry Comments

In this Appendix, ministries provide feedback to the Environmental Commissioner on articles contained in the main part of the Annual Report. This year, the Significant Issues section of the report provides the ECO's analysis of two areas of public policy that cut across ministry mandates: land use planning in southern Ontario and planning in northern Ontario. For the sake of clarity and economy, the ECO asked the various EBR *ministries to coordinate their comments on these two sections and to effectively provide a Government response to the ECO's analysis.*

Part 1: *Environmental Bill of Rights*

(No comments from ministries)

Part 2: Significant Issues

Irreconcilable priorities – the challenge of creating sustainable communities in southern Ontario

Government of Ontario Coordinated Response

The Government recognizes the importance of integrating the principles of sustainability and carrying capacity into land use and infrastructure planning. Southern Ontario is experiencing very rapid growth. Ministries have worked together over the past few years to integrate their activities and create an unprecedented range of initiatives that complement one another to balance growth and development pressures with the need for ecosystem and community sustainability. There is strong policy direction and a variety of tools to help Ontario and its communities meet the challenges of growth. Notable examples include:

Living Sustainably Within a Watershed

MOE is committed to encouraging land use and infrastructure planning that mitigates the cumulative impacts of growth on watersheds. MOE has recently introduced legislation that reflects a watershed-based approach:

- The *Clean Water Act* ensures communities are better able to protect their drinking water supplies through the development of collaborative, locally driven, watershed-based source protection plans.
- The *Safeguarding and Sustaining Ontario's Water Act* strengthens the ban on water diversions in the Great Lakes Basin, promotes water conservation, and requires consideration of climate change and cumulative impacts.

MOE also worked with relevant ministries to develop policies for planning for sewage and water services that can be sustained by the water supply, promoting water conservation; using the watershed as the ecologically meaningful scale for planning; restricting development to protect municipal drinking water supplies, improve ground and surface water; and ensuring stormwater management protects water quality.

MOE will continue to assess the impacts of growth within high-stress water ecosystems, including work in the Lake Simcoe watershed, and the Waterloo and Paris-Galt Moraines.

The Growth Plan contains a number of policies directly related to the protection of water resources and for water and wastewater servicing:

- Ensure that sustainable water and wastewater services are available to support future growth;
- Protect, conserve, enhance and wisely use water resources;
- Limit extensions of services to areas where water conservation initiatives are being implemented; and
- Encourage municipalities to prepare watershed plans and innovative stormwater management practices.

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The Growth Plan also contains direction that MPIR will work with MOE, other ministries and stakeholders to conduct sub-area assessments focusing on the implications of projected growth for water and wastewater services.

Provincial plans and policies recognise the importance of balancing natural heritage protection with the long-term infrastructure needed to support Ontario's communities. Typically, an environmental assessment for infrastructure projects will consider the protection of natural features and water resources, and develop alternative options (e.g. road alignments which avoid features) and where appropriate, identify mitigation strategies to address impacts.

The Growth Plan does not create growth pressures. It seeks to plan proactively for the growth that is happening in southern Ontario and to shape in a way that minimizes the environmental and economic costs, and maximizes the benefits.

The Growth Plan contains a set of clear, consistent, forecasts based on a common demographic model that uses reasonable assumptions on demographic trends, migration and other growth-related issues. In some cases this resulted in different forecasts than what municipalities themselves had forecasted (sometimes higher, sometimes lower).

Creating a Sustainable Transportation System

Ontario's economy and quality of life depends on a transportation system that is safe, efficient and reliable. Expanding transit is a key part of our plan to improve the transportation system. More use of public transit instead of cars means cleaner air, decreased fuel consumption, reduced gridlock, and healthier communities.

Ontario recently announced Move Ontario 2020, an investment of $17.5 billion over 12 years for major rapid transit projects in the GTA and Hamilton – the largest public transit investment in Canadian history. The GTTA will prepare a detailed implementation plan by early 2008. It is estimated that this initiative will reduce carbon dioxide emissions by 10 megatonnes and remove 300 million car trips.

By 2010, Ontario will have invested $1.6 billion from gas tax revenue in more than 86 transit systems in 104 communities to expand service across Ontario. Transit across the GTA is being made more convenient through a single fare collection system - the GTA Fare Card. Ontario is providing $50 million annually to municipalities to replace their aging transit fleets. Ontario also committed over $750 million for transit projects through the Transit Technology and Infrastructure Program and $838 million in transit projects through Move Ontario, announced in the 2006 budget.

GO Transit served over 48 million GGH riders in 2006–07. Since 2003, MTO invested almost $1.8 billion, including $457 million this year, to make GO a better service for commuters. Ridership increased 10% in the last few years (4.4 million more passenger trips), with the total this year projected at about 51 million. Municipal transit ridership also increased by over 65 million passenger trips since 2003, removing 54 million car trips from Ontario roads.

MTO invested over $127 million to build the first provincial High Occupancy Vehicle (HOV) lanes on Highways 403/404. MTO proposed a HOV-lane Network Plan that will result in over 450 km of HOV lanes spanning the GGH. This sustainable, modernized highway system will prioritize transit and carpooling to make better use of the highway network and increase auto occupancy rates.

MTO recently hosted a conference on sustainable transportation to learn from leading experts and explore innovative ways of enhancing the sustainability of Ontario's transportation system.

The "Future Transportation Corridors" identified in the Growth Plan include the GTA West and the Niagara to GTA Corridors. They are transportation capacity studies, not highway projects.

Annual highway investment is a blend of maintaining existing highways in good condition and expanding corridors key to provincial interests in mobility, access and trade. In 06/07, of the $1,124 million spent on provincial highway construction, $575 million was for rehabilitation and $549 million was for expansion, including $59 million for the HOV lanes.

Rehabilitation dollars are used to repair existing roadways, bridges, and improve roadside safety features such as guiderails, median barriers, traffic signals, lighting, and signs. Much highway expansion occurs within the highway right-of-way, and does not affect agricultural lands or green space.

The Growth Plan makes investment in transit the first priority for moving people in the region.

The PPS, 2005 contains strong policies that promote compact form, intensification and redevelopment (e.g. policies 1.1.3.3 to 1.1.3.7), and densities and a mix of uses that minimize the length/number of vehicle trips and support public transit and alternative transportation modes.

Through Bill 51, municipalities now have explicit authority to identify minimum density and height. Further, a new provincial interest of promoting development that is designed to be sustainable to support transit and pedestrians has been added. These and the natural heritage policies of the PPS, 2005 help to protect valuable greenspace.

The Growth Plan requires:

- street configurations and urban form that support walking, cycling and transit;
- minimum densities be set in intensification areas including transit stations, corridors and downtowns commensurate with planned transit services;
- municipalities to integrate safe, comfortable pedestrian and bicycle networks into their transportation planning; and
- municipalities to develop and implement transportation demand management policies.

The Growth Plan's intensification, greenfield density, and urban growth centre density targets set aggressive standards for more compact future development.

The intensification target, when fully achieved by 2015, represents a more than doubling of the recent intensification rate in the region.

For density targets, it is important to understand the scale and methodology for measuring them. They are mostly gross targets measured across a broad geographic scale. As such they represent a significantly more compact form than most recent development patterns.

Protecting Wetlands

Under the policy-led system in place for land use planning, municipalities are called upon to implement provincial policies. Planning authorities must balance provincial interests and consider local interests. In recognizing the importance of good data:

- The MNR continues to work on development of a more cost-effective Ontario Wetland Evaluation System (OWES), including use of GIS technology.
- Current wetland activities under the Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem (COA) include field evaluations of "new" wetlands.

Conservation authorities continue, under the *Conservation Authorities Act* regulations, to review development proposals that may adversely impact on all wetlands including Provincially Significant Wetlands.

MNR is actively pursuing conservation of biodiversity values, including those associated with wetlands, e.g., through implementation of Ontario's Biodiversity Strategy and its new *Endangered Species Act* and its programs. Both initiatives address the need for stewardship and financial incentives.

The *Drainage Act* is a tool guiding the construction and management of communal drainage systems in rural Ontario. These systems are often referred to as municipal drains, and municipalities manage the drains within their own boundaries. Similar to storm sewers in urban areas, municipal drainage systems are an important rural infrastructure providing drainage for Ontario's agriculture sector and rural communities. The *Drainage Act* allows the Minister of Agriculture, Food and Rural Affairs to provide grants for various activities conducted under this Act, including construction, repair, improvement, maintenance, and operations. Under the Agricultural Drainage Infrastructure Program (ADIP), grants are provided to eligible applicants for maintenance or repair of existing municipal drains, and for improvement projects to re-establish or enhance wetlands. Grants are not provided for the construction or improvement of drainage systems that drain through or from significant wetlands as defined in the Provincial Policy Statement. OMAFRA does not support the draining of wetlands. The *Drainage Act* and associated ADIP grant program have been used to help recreate wetlands. The Wetland Drain Restoration Project is an ongoing effort by the Ministry of Natural Resources, the County of Norfolk, and other significant partners, which has resulted in the restoration of numerous wetlands.

In addition to PSWs, the PPS, 2005 requires protection of natural features and areas, and water resources. Municipalities may identify locally significant natural features for protection, and many municipalities have done so in their planning documents. Under the One Window protocols, MNR is circulated all official plans, which are the primary vehicles for ensuring wetlands and PSWs are reflected. This is also the way to ensure any updated wetland mapping or evaluations undertaken by MNR get reflected. This is a written protocol signed by all the Deputy Ministers. Further, MMAH continues to consult MNR directly with respect to major development applications sent to MMAH which abut or are adjacent to a PSW.

Preserving Natural Areas

The close-to-market principle makes the most environmental sense; by reducing transportation distances, environmental impacts such as air borne pollutants are significantly reduced. This principle is also being embraced for agricultural products. Interim use implies an alternative use of the land until such time as the site is rehabilitated. It does not necessarily imply that the use will be of short duration. The PPS, 2005 Section 2.5.4.1 requires restoration for agriculture and under Section 2.5.3.1; rehabilitation is generally required to accommodate subsequent land uses. The *Aggregate Resources Act (ARA)* cannot recognize alternative after uses, such as golf courses and residential subdivisions, without municipal input and approvals.

In order to develop a long-term strategy, background data must be gathered to effectively assess the current status of the aggregate resource. MNR is presently developing a terms of reference, as noted in the introduction. It is anticipated that the draft terms of reference and an underway study on recycling will be completed by the end of 2007.

A comprehensive application process is intended to involve and be fair to all interested parties, and to achieve good land-use planning decisions. Automatically turning down a pit or quarry proposal without the basis of land use policy or analysis may be seen to violate those principles. However, it is important to note that to facilitate upfront information and identification of issues and more effective decision-making processes, the *Planning Act* provides municipalities with the ability, by by-law, to require applicants to consult with the municipality or planning board before submitting an application for an OPA, ZBA or a plan of subdivision.

The Greenbelt Plan balances the need for aggregate extraction with strong new protections for natural areas, and stringent new rehabilitation policies.

The Natural System in the Protected Countryside area of the Greenbelt Plan places priority on the protection and restoration of natural features and functions. The Plan prohibits new aggregate extraction in significant wetlands, significant habitat for endangered and threatened species, and significant mature woodlands.

Conclusion

Integrated policy direction and legislative tools provide for the protection of natural heritage features, including water resources, while focusing growth in settlement areas and promoting intensification, public transit use and active forms of transportation. These and other measures are designed to allow Ontario's communities to grow in a sustainable way and to ensure that natural areas and features will be preserved for Ontarians, now and for the future.

Developing priorities the challenge of creating a sustainable planning system in northern Ontario

Government of Ontario Coordinated Response

The Government is pleased that the ECO positively acknowledges the existing land use planning strategy, Ontario's Living Legacy (OLL) in the Area of the Undertaking (AOU). The southern portion of the boreal forest has been actively managed under the OLL strategy since 1999.

The Government, led by the Ministry of Natural Resources, is having discussions on far north land use planning with Aboriginal communities and other interests including resource development sectors. With the coordinated support of other Ministries, in particular; Ministry of Northern Development and Mines (MNDM), Ministry of Energy (ENG), and Ministry of the Environment (MOE), the Ministry of Natural Resources is seeking a workable consensus on how to undertake land use planning in the far north.

In addition, a number of other strategies continue to be employed to protect this unique ecosystem and address the ongoing needs of communities and resource developers in an environmentally sustainable manner. For example:

A Systematic Approach in the Far North

The Ministry of the Environment is responsible for the administration and coordination of the *Environmental Assessment Act (EAA)* and ensuring that the requirements of the act are met. This includes:

- reviewing and making recommendations to the Minister for decisions about environmental assessments, Class EA documents, declaration orders and designation requests;
- ensuring environmental protection through technical review of environmental assessment materials; and
- coordination of the review of these materials by other ministries, federal departments, municipalities, Aboriginal communities and members of the public.

Energy

The Ministry of Energy works with other ministries such as MNR, who have primary responsibility for land use planning in the north in order to share information and obtain input. This ensures that other Ministries are aware of energy policy, planning, or specific projects which may be under development. For example, regarding the potential development of long-distance transmission lines in the north, the Ministry of Energy is working with other ministries to ensure that these proposals are considered within the broader comprehensive land-use planning strategy for the north.

The Ministry of Energy is committed to ensuring that any energy projects undertaken follow all applicable approval requirements to ensure protection of the northern environment.

Mining

The Government continues to ensure the protection of the Far North, including the boreal forest, through existing legislative tools. When any mineral development is being considered, numerous requirements in federal and provincial legislation and regulations with respect to environmental issues must be met prior to an individual project proceeding. This ensures comprehensive, coordinated review by the appropriate government agencies.

Existing regulatory requirements under the *Mining Act* for mine closure plans, and commitments in the Ministry of Northern Development and Mines' Statement of Environmental Values ensure that the review of mineral development is comprehensive, and considers cumulative ecological, physical, social, and economic impacts.

Ontario's *Mining Act* does not presume "free entry for mineral development." Exploration for mineral resources is challenging because it is not possible to definitively predict where a mineral resource occurs hidden beneath the land surface. "Free-entry" to land for claim staking and exploration is an internationally adopted approach to mitigate the technical challenge and investment risk associated with mineral resource exploration. Without early stage mineral exploration, there will be no discoveries and Ontario will not benefit from responsible mineral development. The vast majority of claims staked lapse before or following the prospecting and early exploration stage. These activities have a low environmental footprint and impact.

Today, the *Mining Act* also requires financial assurance to guarantee the return of lands to an acceptable state upon the completion of mining activities. In fulfillment of the Mineral Development Strategy 2006 commitment to develop proposals to reduce legal barriers to voluntary rehabilitation of abandoned mine hazards by industry, "Good Samaritan" legislation was passed in the spring of 2007, which will allow for the voluntarily rehabilitation of abandoned mine hazards on Crown-held sites.

One of the commitments in Ontario's Mineral Development Strategy is to address concerns of surface rights holders about mining rights by proposing amendments to the *Mining Act* and regulations. On July 18, 2007 MNDM posted a proposal for a new law on the Registry that would clarify Ontario's mineral exploration rules by proposing amendments to the *Mining Act* and its regulations to address concerns of surface rights holders and to provide the mineral exploration industry with certainty of investment through clearer rules for exploration in the province.

The Crown respects and has a duty to consult on asserted or established Aboriginal or treaty rights. MNDM is in the process of seeking input and advice from Aboriginal communities on how to improve the Aboriginal consultation processes for mineral sector activities.

Land Use Planning in the Northern Boreal Initiative (NBI) Area

MNR introduced the Northern Boreal Initiative in 2000 to ensure orderly development of new opportunities. The NBI goals include:

- planning led by First Nations;
- provision of local and broad dialogue and consultation; and
- decisions reflecting community objectives, landscape considerations and provincial policy direction.

The Whitefeather Forest and Adjacent Areas Land Use Strategy (WFAA) is the first planning initiative under the Northern Boreal Initiative. The Pikangikum First Nation completed a community-based land use planning process for the Whitefeather Forest in June 2006.

In the March 2007 Budget the Ontario Government announced $2 million in funding to support the implementation of the WFAA. A key activity for that funding is dedicated protected area dialogue between the MNR and Pikangikum FN intended to result in a stewardship agreement, discussions on provincial park or conservation reserve classification, and boundary regulation.

The process to identify new protected areas in the WFAA strategy considered information at the ecoregion scale (e.g., including provincially significant natural heritage features). To assist the landscape scale dialogue about protected areas a "Protected Areas Working Group" was established, which met several times a year during the planning process. A second landscape level subject addressed in the WFAA planning process was conservation of woodland caribou. Two workshops focussing on caribou conservation were attended by provincial science advisors and analysts, environmental group representatives, and scientists affiliated with a number of academic organizations. MNR in partnership with Pikangikum First Nation is preparing a comprehensive document in support of a declaration order, for submission to the Ministry of the Environment in December 2007.

Forestry and Wood Supply in the Area of the Undertaking (AOU)

Environmentally significant decisions and determinations of sustainability, including determinations of sustainable supplies of forest resources that may be made available for allocation and harvest licensing purposes, are determined during the development of forest management plans and are documented in approved plans.

The Provincial Wood Supply Strategy does not set demand or supply – industry sets demand and demand is approximated through mill licensing by identifying a mill capacity which is reflected on the mill licence. Sustainable supply is determined by forest management plans. The provincial strategy merely summarizes supply from Forest Management Plans and demand reflected through recognized operating levels (mill capacity) from mill licences. The strategy does identify strategies to improve estimates of wood supply and in some cases address wood supply issues.

Environmental Assessment Process

The Ministry of the Environment is responsible for the administration and coordination of the *EAA* including ensuring that the requirements of the *EAA* are addressed. This includes reviewing and making recommendations to the Minister for decisions about environmental assessments, Class EA documents, declaration orders and designation requests. MOE's role in the review of environmental assessment materials includes technical reviews to ensure the environment will be protected and coordinating the review of environmental assessment materials by other ministries, federal government departments, municipalities, aboriginal communities and members of the public. MOE takes its responsibilities under the *EAA* very seriously including ensuring compliance with requirements of the *EAA*. MOE feels that the review process and compliance strategy fulfill those responsibilities, and continually conducts internal reviews to ensure the environmental assessment program meets the needs of all stakeholders and continues to be protective of the environment.

This ends the coordinated ministry response section. Individual ministries provided the following responses to articles in the Annual Report.

Conserving Woodland Caribou: The Benchmark for Northern Sustainability

MNR: MNR recognizes the value of woodland caribou as an indicator of boreal forest health, and the need to undertake recovery actions. The Caribou Recovery Team was mandated to develop a science-based Recovery Strategy. The Recovery Team responded to comments received during the Registry consultation process and made significant changes to the final Recovery Strategy. These addressed points raised by the ECO including habitat and protected areas.

MNR agrees that moose management must consider implications to caribou. MNR is moving towards a landscape approach that jointly considers management objectives for a range of wildlife species, including deer, moose and caribou. As moose is a relatively recent arrival in parts of northern Ontario, an objective to manage for pre-colonization population levels of moose when setting harvest quotas within caribou range and within areas where caribou recovery is envisioned would essentially mean managing for zero moose numbers in some areas. Such an extreme objective is unlikely necessary or socially acceptable given that caribou appear to be able to co-exist with and space themselves away from low-density moose populations across northern Ontario.

MNR recognizes that achieving habitat "protection" for woodland caribou under the *Endangered Species Act, 2007* requires consideration of the inherently dynamic nature of the boreal forest and the landscape level at which caribou use the forest. MNR has anticipated this in developing the direction for caribou habitat in the draft Forest Landscape Guide.

MNR has been actively managing woodland caribou for several decades through forest management planning, park establishment and expansion, increased monitoring, etc. Recent initiatives include collaboration on the National Recovery Strategy, finalization of the provincial Recovery Strategy, initiation of a Caribou Conservation Framework (policy), research initiatives, developing a provincial caribou database and the establishment of provincial teams to coordinate recovery approaches.

Ontario's Electricity System

ENG: In 2006, the Independent Electricity System Operator (IESO) reviewed its forecasting methods, and on June 9, 2006 concluded that it had underestimated demand by up to 3,000 megawatts. The Minister's Directive therefore instructed the OPA to develop, with the IESO, the earliest possible schedule for coal replacement, given in-service dates for replacement generation and transmission, while ensuring system reliability. Under O. Reg. 424/04, the OPA is required to provide a sound rationale - including analyses of environmental impacts and alternatives to – for electricity projects requiring an EA under Part II of the EAA, and for which an application under the Act would have to be made within the first five years of the IPSP.

As noted by the Ontario Energy Board, O. Reg. 424/04 does not entail avoidance of regulatory approvals; rather, it can "result in the creation of analysis that can be relied upon by future electricity project proponents in addressing the scope of subsequent environmental assessments". The Minister's Directive was the product of an extensive consultation process.

The OPA's December 2005 Supply Mix Advice Report (developed with stakeholder input) was posted for public comment on the *EBR* Registry for 76 days, and the government held public meetings in a number of communities across the province, the results of which are reflected in the Directive. The OEB's review mandate includes ensuring compliance with O. Reg. 424/04, which requires consideration of environmental protection and sustainability. The review process itself will be open and transparent, including public hearings at which environmental experts may apply for intervener status. At the project level, projects recommended in the IPSP will be subject to approvals under the *EA Act*.

Updates

The Recreational Fishery – A Risky Streamlining of the Rules?

MNR: MNR plans to manage recreational fisheries on a landscape level basis. The change will improve fisheries management, reduce regulation complexity, increase public involvement in management and effectively monitor the resource status. Anglers will see few changes to the regulations, except that new Fisheries Management Zones will replace the current Fishing Divisions. There has been extensive public consultation on the development of the new framework for recreational fisheries management. This has included nine provincial news releases between 2004 and 2007, 18 *EBR* postings, two major workshops with staff and key clients, distribution of 400,000 information notes, dozens of presentations to stakeholders and displays at Fishing and Outdoor Shows.

Ontario Gives a Big Boost to Glass Recycling

MOE: The Ontario government has stated the environmental goals for the Deposit Return Program as follows: an 85 per cent recovery rate for containers that are part of the program; none of the recovered materials going to landfill; and 90 per cent of recovered glass being recycled into high value products, such as new glass bottles or fibreglass insulation. In July 2007, MOE posted a proposed regulation on the Registry exempting beverage alcohol containers collected under the Deposit Return Program from WDO's Blue Box Program Plan. Affected stewards, including the LCBO, would still be obligated for other blue box materials that they generate, such as their printed paper and packaging.

Missed Opportunity on Environmental Assessment Reforms?

MOE: The ministry has placed the emphasis on consultation through the EA process as the most effective approach to ensure issues with respect to site-specific instruments are considered before decisions are made on projects. To support this consultation, the finalized version of the Consultation Code of Practice was posted on the Environmental Registry on June 20, 2007, following wide circulation and revisions due to public input. As part of the EA Improvements initiative, a compliance officer has been hired to work on implementing the compliance strategy, including audits of approved EA projects. The compliance strategy does not interfere with people's right to request an *EBR* investigation. Increasing the statute of limitations for prosecution under the *EAA* to two years was not considered in the EA Improvements initiative. In future, should MOE consider legislative changes, we will include a review of the statute of limitations.

Reforming the *Endangered Species Act*

MNR: MNR appreciates the ECO's support for undertaking a review of the *Endangered Species Act* and the consultation undertaken to develop the new act. MNR is confident the new legislation will provide better protection for species at risk and their habitat.

Part 3: Ministry Environmental Decisions

Protected Areas Law: Ecological Integrity as the First Priority

MNR: The *PPCRA* came into effect on September 4, 2007. The Ministry is committed to complementing the new Act, and the supporting regulations, with sound management and enforcement actions. In developing a new planning manual, as mandated by the *PPCRA*, MNR will consider the role of ecological integrity indicators.

For 2007/08 $3.8 million of additional funding will support the management of provincial parks and conservation reserves. To assure that ecological integrity is protected to an optimal degree Ontario Parks has put in place a risk-based enforcement strategy. This strategy aims enforcement where it is necessary to protect ecological integrity and public safety. Existing mechanisms provide an opportunity to consider potential impacts that activities on lands adjacent to provincial parks and conservation reserves may have on the ecological integrity of these protected areas.

Providing Municipalities with New Tools for Sustainability

MMAH: Bill 51 has put information, participation and consultation at the front end of the planning process to facilitate upfront identification of issues and input from the public. To maintain appeal rights, the public and others only need to identify their issues to council before it makes its decision. This is necessary to have issues identified early in the planning process and not at the end.

With respect to the issue of complete applications, Bill 51 requires municipalities to advise the public when they receive a completed application and make it available for viewing. This change encourages the public to become actively engaged early in the process so that issues and concerns are raised before municipal council.

With respect to energy undertakings, the Bill 51 provisions do not affect project proposals at this time. Any energy projects that were subject to the *Planning Act* before Bill 51 came into effect are still subject to the *Planning Act*. This is because the government has to make a regulation exempting the projects. If the government proposed such a regulation, there would be a regulation proposal on the Environmental Registry and an opportunity for public input. These projects would still be subject to the *EAA* and be regulated by Ontario Energy Board requirements.

MNR's Aggregates Procedures Manual

MNR: MNR's policy for new licences or wayside permits, or when considering requests for changes to an existing site plan or condition, requires applicants to address Section 35 of the Oak Ridges Moraine Conservation Plan (ORMCP). No new aggregate extraction is permitted in areas designated by the ORMCP land use map as "Natural Core Area". Extraction is permitted within other designations but applications must meet more stringent review and approval requirements. The policy states that MNR should not approve changes that would constitute a new conflict or significantly increase an existing conflict.

Clean Water Act

MOE: The province has committed $120 million for source protection planning in the years 2004–2008. Costs for source protection planning are tracked on a quarterly basis to ensure that the allotted funding is adequate and being spent appropriately. The Ontario Drinking Water Stewardship Program, enshrined in the legislation, will provide Ontarians with funding for actions to protect drinking water. An advisory panel was established to provide advice on long-term program design. The panel's report is available on the Ministry's website, with a regulation to be developed over the coming months. The 2007 budget allocated $21M to the program over the next 3 years in addition to the $7M that was already allocated for this year. Program funding to property owners in vulnerable areas will help to offset potential municipal costs.

Implementation costs will be quantifiable once technical studies and risk assessments for source protection plans are completed and needs can be determined. In the Part Two Report of the Walkerton Inquiry, Justice O'Connor indicated that a combination of funding mechanisms should be used to cover source protection implementation.

The source protection framework requires collaboration between neighbouring watersheds and integration with federal and provincial Great Lakes agreements. The process will provide the necessary information to evaluate and act on required Great Lakes targets.

The Act requires drinking water issues that affect water quality or quantity in a vulnerable area to be described. It is anticipated that cumulative impacts will be addressed through the evaluation of these issues during the development of the assessment report and the policies in the source protection plan.

The Whitefeather Forest and Adjacent Areas Community-Based Land Use Strategy

MNR: There were approximately 460,000 hectares of dedicated protected areas identified in the Whitefeather Land Use Strategy. Following approval of the land use strategy in June 2006, these areas were withdrawn from mining claim staking under Section 35 of the *Mining Act*.

MOE: The Ministry of Natural Resources (MNR) is in the process of preparing a submission to the Ministry of the Environment for approval under the *Environmental Assessment Act*, for forest management activities on Crown lands on the Whitefeather Forest. MOE will consult broadly on any MNR submission and will consider comments received.

Interesting Instruments on the Registry

Waste Pelletization Plant **(MOE:)** Dongara and Arbour Power have withdrawn their proposals relating to the use of the waste pellets. The ministry will ensure that all standards, including all applicable emission standards, are met should any future application be received proposing the use of pelletized waste as an alternative fuel source.

Part 4: Applications for Review and Investigation

Road Salt: Can Ice-Free Roads and Environmental Protection be Reconciled?

MOE: The ministry agrees that the use of road salts poses a threat to the environment. The ministry is encouraged by the number of road authorities (more than 200, representing 95% of Ontario's population) that are participating in Environment Canada's Code of Practice for the Environmental Management of Road Salts. The ministry will observe the effectiveness of the implementation of the Code of Practice to reduce salt use and to mitigate environmental impacts. Following the review of Environment Canada's Code of Practice in 2009, if it is evident that significant progress has not been made in reducing salt use and mitigating environmental impacts, then the ministry may consider alternative regulatory strategies and amend Regulation 339.

Our Cratered Landscape – Can Pits and Quarries be Rehabilitated?

MNR: Further actions by MNR include:

- meeting with the applicants to discuss the status of the review recommendations;
- Agreeing to meet on a periodic basis to discuss issues of common interest related to the aggregate resources program;
- Discussions were held with The Ontario Aggregate Resources Corporation and Ontario Stone, Sand and Gravel Association regarding the review and they have agreed to co-operate and work with MNR to implement the recommendations including those related to the MAAP program; and
- MNR will continue to monitor staff workload to determine whether program capacity is sufficient.

Although there are approximately 6900 abandoned sites on private land (i.e. within designated areas) from the pre-regulation era which were not rehabilitated, only 2700 sites are considered candidate sites for restoration (but only 70 are high priority sites). Many of the 2700 sites do not require further rehabilitation efforts. Even at the time of the inventory in the early 1990s, natural regeneration had already brought these sites to a state where the benefits of further rehabilitation efforts would not be particularly beneficial to the environment.

Review of the Regulatory Framework for Sewage Biosolids

OMAFRA: OMAFRA and MOE have provided public notification on the Registry of their intention to review the regulatory framework for non-agricultural source materials (NASM), which include sewage biosolids. Both ministries are continuing to work together to develop proposed revisions and, when completed, they will be posted on the Registry for public review and comment. Nutrient management uses a precautionary, risk-based approach and science-based standards for the management of both agricultural and non-agricultural source materials, and will continue to adhere to these tenets during the NASM regulatory revisions. The concerns that have been expressed with respect to issues of quality of biosolids are under the purview of MOE and regulated under the *Environmental Protection Act (EPA)*. The need for a broader waste management strategy would need to be considered first under the *EPA* and if possible then incorporated into the NASM regulatory framework.

MOE: A joint MOE/OMAFRA review of Ontario's current regulatory framework for the management of non-agricultural source materials (NASM) which includes sewage biosolids is ongoing. As part of this review, the U.S. EPA's pathogen standards for Class A and Class B are being considered. As part of the regulatory framework considerations MOE and OMAFRA are expecting to develop a sewage biosolids strategy. Revisions will be designed to further protect the environment, while allowing for land application of specific materials that safely enhance the productivity of soils, rather than having these materials sent to landfill or be incinerated.

Can Ecological Integrity and Logging be Reconciled in our Flagship Park?

MNR: Logging in Algonquin Provincial Park is consistent with the new *Provincial Parks and Conservation Reserves Act (PPCRA)*, which came into effect in September 2007. The issue of logging in Algonquin was publicly reviewed as part of the development of the new legislation, and the passing of the *PPCRA* confirms that logging will continue in Algonquin.

Portlands Energy Centre

MOE: MOE denied the request based on its assessment of the evidence provided in the application for review. The MOE also advised PEC that to proceed, an application for consideration would be required to change to a simple cycle process. MOE believes that emphasis in public consultations at the planning stage through the EA process is the most effective approach to ensuring issues are identified and resolved before site specific decisions are made. The broader issue of cumulative effects will require policy analysis by the ministry and stakeholder consultation. The final approval of O. Reg. 419/05 was a major step in protecting air quality.

Part 5: The Environmental Registry

Quality of Information

Access to Supporting Information – **MNR:** MNR's goal is to make the entire *Aggregate Resources Act* Manual available on the ministry's public web site, commencing with some of the more crucial policies once translation into French has been completed. MNR anticipates these policies will be available by April 1, 2008.

Explaining How Public Comments Were Addressed – **ENG:** The conservation goal set out in the Minister's June 2006 Directive to the OPA was, in effect, twice the amount proposed by the OPA in its December 2005 Supply Mix Advice Report.

Unposted Decisions

Caribou Recovery Strategy – **MNR:** MNR does not consider recovery strategies as government policy. Recovery strategies provide independent, science-based advice on approaches for recovery of threatened and endangered species. The information in recovery strategies is intended to be available to government, and others, for consideration in decisions or activities that may affect the species and in planning conservation actions.

MOE's Exemption for the Integrated Power Supply Plan – **MOE:** O. Reg. 276/06 was made to clarify that the IPSP was not subject to the *Environmental Assessment Act (EAA)*. The regulation did not change, but simply confirmed the law. The existing *EAA* statutory framework will continue to apply to projects identified in the IPSP, namely the Waste Management Projects Regulation (O. Reg. 101/07), the Electricity Projects Regulation (O. Reg. 116/01) and Part II of the *EAA*. O. Reg. 276/06 does not create a new *EBR* exemption for subsequent permits and approvals for projects designated under Part II of the *EAA*, O. Reg. 101/07 or O. Reg. 116/01.

Exemption of Projects under the IPSP – **MOE:** The Integrated Power System Plan (IPSP) was not subject to the *Environmental Assessment Act (EAA)*. To clarify this, Ontario Regulation 276/06 was made which designates and exempts the IPSP from the *EAA*.

Late Decision Notices and Undecided Proposals

Generation Attribute Certificate Tracking – **ENG:** As this initiative is no longer being proposed, the ministry will update the status of this proposal on the Environmental Registry.

Ontario Heritage Act Regulations – **Ministry of Culture:** ECO was concerned that decision notices had not been posted to the Registry for regulations under the *Heritage Act*, posted as proposals in October 2005. MCL advises that it has now posted the decision notices for these regulations under the *Ontario Heritage Act*.

Part 6: Ministry Progress

Keeping the *EBR* in Sync With New Laws and Government Initiatives

Prescribing the Ontario Heritage Trust – **Ministry of Culture:** MCL met with ECO staff in August 2007 to discuss the ECO's recommendation that the Ontario Heritage Trust (OHT) become a prescribed agency under the *EBR*. MCL and MOE take the position that agencies, boards and commissions are not included under the *EBR* and it would be unprecedented to prescribe them. MCL will continue to urge OHT to consult and share information on its activities, in an appropriate and timely way, with its stakeholders.

MMAH: The *Oak Ridges Moraine Conservation Act (ORMCA)* and the *Greenbelt Act (GBA)* have been prescribed under the *EBR* with the filing of O. Reg. 216/07 and O. Reg. 217/07. O. Reg. 217/07 makes the *ORMCA* and the *GBA* subject to the *EBR* requirements for public participation and applications for review. O. Reg. 216/07 adds certain *ORMCA* instruments to the list of instruments that are classified under the *EBR* for giving notice on the Registry.

Kawartha Highlands Signature Site Parks Act – **MNR:** MNR will work with MOE to have the *Kawartha Highlands Signature Site Parks Act* prescribed under the *EBR*.

Enforcement of the Fisheries Act – **MNR:** Ontario residents can request investigations of alleged *Fisheries Act* contraventions through the Federal Commissioner of the Environment and Sustainable Development.

Part 7: Appeals, Whistleblowers, and Lawsuits

(No comments from ministries)

Part 8: Developing Issues

Flooding Hazards: Prevent and Mitigate, or Compensate and Rehabilitate?

MMAH: In addition to the protections outlined in the report, the PPS, 2005 also requires that among other policies, development shall not be permitted in: the dynamic beach hazard; or a floodway, which in a one zone concept is the entire flood plain and in a two zone concept, is the contiguous inner portion of the flood plain (not including the flood fringe). These policies provide strong protection for the public and help to mitigate damage to the health of the environment. To help with the implementation of the policies, the government has developed support materials in the past and is looking at possibly developing more. The PPS, 2005 permits Special Policy Areas (SPAs) to be created in exceptional situations in areas within a community that have historically existed in the flood plain, and only where special policies have been approved by both the Ministers of Natural Resources and Municipal Affairs and Housing.

MNR: MNR will continue to monitor events to assess and develop technical criteria in order to mitigate floods and be adaptive to change. MNR is coordinating an inter-ministry urban flooding initiative. MNR has engaged ministries/stakeholders in the regulatory enhancement for the management of dams. Since 1999, MNR has increased capital funding for maintenance of MNR owned structures up to $8M annually. MNR re-established CA Capital Transfer Fund (studies/repairs to existing dams and erosion control works in 2003/04:

- Annual $5M provincial grant (matched 50:50 through municipal levy).
- MNR distributed funds across CAs based on prioritization of CA needs to reinvest in aging water and erosion control infrastructure. CAs have taken advantage of this funding over the last 5 years (including 2007/08). MNR is expecting to spend out the full $5M in 2007/08; approximately 150 projects are funded annually. Specific mandated programs delivered by CAs with transfer payment funds include flood, erosion control operations, Hazard Prevention and Watershed Management. CAs work with other ministries to find alternative sources of funding.

MOE: MOE will continue to work with other ministries to better understand the implications of climate change for long term stormwater management infrastructure planning and to assess the need for updated policies in this area.

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Acts, Federal

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